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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE FIRST PART */ OF THE 24th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 23 August 1990, at 3 p.m.

Chairman: Mr. TURK

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Consideration of draft resolutions and decisions (continued)

*/ The summary record of the second part of the meeting appears as document E/CN.4/Sub.2/1990/SR.24/Add.1.

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Review of the work of the Sub-Commission (agenda item 3) (continued)
E/CN.4/Sub.2/1990/L.4, 7, 15 and 18)

Draft resolution E/CN.4/Sub.2/1990/L.4

1. The CHAIRMAN invited the Sub-Commission to consider the draft resolution contained in document E/CN.4/Sub.2/1990/L.4 and the amendments thereto contained in document E/CN.4/Sub.2/1990/L.18.
2. Mrs. PALLEY, speaking on a point of order, questioned whether the way in which rule 59 of the rules of procedure was currently being applied was correct. As a result of the current application of that rule, the Sub-Commission now had before it the draft resolution contained in document E/CN.4/Sub.2/1990/L.4, which was quite unnecessary because rule 59 clearly empowered the Sub-Commission to vote other than by show of hands abnormally, and draft resolutions concerning allegations of violations of human rights in specific States were concerned with exceptional, weighty and sensitive matters not normally within the Sub-Commission's jurisdiction. The Sub-Commission had been requested by the Commission on Human Rights not to adopt unnecessary resolutions. Consequently, before proceeding to vote on the unnecessary draft resolution contained in document E/CN.4/Sub.2/1990/L.4, the Sub-Commission should itself interpret rule 59, giving appropriate weight to any opinions that had been expressed on it, instead of bothering the Commission and the Economic and Social Council. She therefore formally moved that the Sub-Commission should interpret rule 59, so that in future it could vote on draft resolutions relating to violations of human rights in specific countries by secret ballot.
3. The CHAIRMAN said that it was unclear to him whether Mrs. Palley's proposal constituted a motion that no action be taken on the draft resolution under consideration or what point of order was involved. Under a point of order there could be no discussion of substantive matters.
4. After a brief procedural discussion in which Mrs. PALLEY, Mrs. WARZAZI, Mrs. KSENTINI, Mr. ALFONSO MARTÍNEZ and Mr. YIMER took part, Mrs. PALLEY moved that the Sub-Commission should take no action on the draft resolution.
5. Mrs. Palley's motion was rejected by 17 votes to 1, with 4 abstentions.
6. The CHAIRMAN invited any members who wished to do so to explain their votes.
7. Mr. ALFONSO MARTÍNEZ said that he had abstained because, although he could see the logic in Mrs. Palley's motion, he was opposed to any measure that would prevent a vote from being taken on draft resolution E/CN.4/Sub.2/1990/L.4.
8. Mr. CHERNICHENKO explained that he had voted against the motion because psychologically and tactically, it would be better to adopt draft resolution E/CN.4/Sub.2/1990/L.4.

9. Mr. ILKAHANAF said that although he could see the logic of Mrs. Palley's opinion, the Sub-Commission had been discussing the matter of secret voting since 1989 and had been unable to agree. The time had come to consult the Economic and Social Council, as proposed in draft resolution E/CN.4/Sub.2/1990/L.4. He had therefore voted against the motion.
10. Mr. JOINET said that he had voted against the motion because he did not want the Sub-Commission to spend time discussing the question of secret voting session after session. Draft resolution E/CN.4/Sub.2/1990/L.4 had therefore had to be considered.
11. Mr. SADI and Mrs. KSENTINI said that they had voted against Mrs. Palley's motion because the Sub-Commission must solve the question once and for all. The Economic and Social Council should decide, as proposed in draft resolution E/CN.4/Sub.2/1990/L.4.
12. The CHAIRMAN invited Mr. Treat to introduce draft resolution E/CN.4/Sub.2/1990/L.4.
13. Mr. TREAT said that there was now general acceptance of the idea of voting by secret ballot in the Sub-Commission, but various side-issues had been raised. Secret ballots were needed in order to enhance the Sub-Commission's independence. That did not mean that the Sub-Commission was not already independent or lacking in integrity. It was, however, very important that it should have the appearance of integrity. Lobbying was a valuable and normal practice, but intensive country-to-country lobbying at the level of ministries of foreign affairs placed some members in an awkward position. Mrs. Daes had recounted a case in which a member had lost his post because of a vote which he had cast in the Sub-Commission. He did not want that to happen again.
14. At a previous meeting Mr. Yimer had apparently suggested that the Sub-Commission's decisions to vote by secret ballot had been taken for specific ulterior purposes - against China in 1989, and against Iraq in 1990. In his judgement that was a subjective observation; Mr. Yimer seemed to be trying to read other members' minds.
15. Another issue had been raised by Mrs. Palley. When she had first explained her reasoning to him, he had disagreed with her. Since then, however, he had studied the entire advisory opinion handed down by the International Court of Justice in the Mazilu case and the very competent brief prepared by Mrs. Palley. By putting the two together, he had come to the conclusion that it had been intended that the Sub-Commission was free to resort to a secret ballot and that there was no need to suspend the rules of procedure. Other members, nevertheless, might not share that view. He therefore wished to make it absolutely clear that, in submitting the draft resolution with Mr. van Boven, he was not affirming that, in his view, the Sub-Commission was not empowered to vote by secret ballot. Indeed, the Economic and Social Council might find that the Sub-Commission was already empowered to do so and that no further action was required. Alternatively, the Economic and Social Council might do absolutely nothing. However, there was some uncertainty regarding the legal aspects of voting by secret ballot. In his view, the opinion given by the United Nations Legal Counsel was advisory in nature and not binding on the Sub-Commission, which was capable of interpreting its rules of procedure. Moreover, in the light of Mrs. Palley's

brief, the Legal Counsel's opinion was not very clear. If anything, it indicated that the Sub-Commission was already empowered to vote by secret ballot. Nevertheless, when the Sub-Commission had voted on Mr. Joinet's motion, some members had done so on the understanding that a vote would subsequently be taken on draft resolution E/CN.4/Sub.2/1990/L.4. So a vote must be taken.

16. On the following day the Chairman of the Philippines Human Rights Commission was due to appear before the Sub-Commission. She had already attended a meeting of the Bureau, and he had been extremely impressed by her analysis of the work being done by the Sub-Commission and the Commission and of ways of improving their productivity. One of her suggestions was to be the possibility of instituting some kind of committee to co-ordinate the work of the two bodies on a continuing basis. One of the matters which such a committee might consider was the rules of procedure and how they should apply to the Sub-Commission.

17. He did not agree with Mr. Alfonso Martínez that it was wrong to make an amendment to the rules of procedure in the form of a footnote. Since the amendment was to apply to only one subsidiary body of the Economic and Social Council, a footnote seemed logical.

18. To sum up, a substantial majority of the Sub-Commission was in favour of recourse to voting by secret ballot, and it was now just a question of deciding whether the Sub-Commission wanted the Economic and Social Council to give the matter further consideration and to indicate whether or not the secret ballot was being used appropriately. In any case, he hoped that the draft resolution would be voted on soon.

19. Mr. SADI said that the proposed footnote to rule 59 of the rules of procedure, as contained in the draft resolution, was not an interpretation but an amendment, and he expected the Economic and Social Council to view it as such.

20. Mr. SABOIA said that he had supported Mr. Joinet's motion because he believed that the use of a secret ballot on specific issues had enhanced the independence of the Sub-Commission's experts. He was not, however, insensitive to the opinions of some members who thought that indiscriminate recourse to voting by secret ballot might create problems, such as a reduction of the Sub-Commission's accountability, of the responsibility of its members, and of the transparency of its deliberations. For those reasons and for reasons of a procedural nature, he considered it necessary that the Economic and Social Council should be invited to clarify the situation. In any case, it was important to prevent a situation whereby the Sub-Commission was obliged to vote by secret ballot on every draft resolution concerning a specific country. He therefore proposed that in the sixth preambular paragraph the word "may" be inserted before the word "require" and that in the proposed footnote the word "will" be replaced by the word "may". That would give the Sub-Commission greater freedom.

21. Mr. SACHAR expressed the view that a proviso should be proposed to rule 59 to the effect that it would be expedient for the Sub-Commission to vote by secret ballot taking into account the circumstances of any particular matter. The Sub-Commission would then have the general power to vote by secret ballot at any time and on any issue.

22. Mrs. WARZAZI considered that, in the proposed footnote to rule 59, the word "specific" should be deleted from the phrase "allegations concerning violations of human rights in specific countries". She supported the proposal to replace "will" by "may" in the same text.
23. Mrs. KSENTINI considered that the Sub-Commission should not ask for a systematic secret ballot but should seek such a ballot only in cases when one or more members had so requested. A way must be found to minimize the amount of voting on whether or not to have a secret ballot.
24. In her view the proposals contained in draft resolution E/CN.4/Sub.2/1990/L.7 were also important; the two draft resolutions were not incompatible and in fact supplemented one another.
25. Mr. JOINET said that he would be prepared to accept the draft resolution if it included the phrase "if at least one member so requests" at the end of the proposed footnote.
26. Mr. SUESCUN MONROY agreed that the issue must be submitted to the Economic and Social Council. He did not however agree with the proposal that a secret ballot should be conditional on the request of one member.
27. Mr. CHERNICHENKO said that he was not sure whether the proposal to have a secret ballot at the request of one member would be acceptable to the Economic and Social Council. If he were himself a member of the Council he would prefer the wording as it stood in draft resolution E/CN.4/Sub.2/1990/L.4. If the Sub-Commission was empowered to use the secret ballot in some instances and not in others, that would mean that it would be adopting a selective approach which could lead to discrimination in the treatment of different States.
28. If there was a consensus there would be no need for a secret ballot. If, however, there was no consensus there should then be a secret ballot.
29. Mr. ALFONSO MARTÍNEZ said that he opposed the proposed text as an attempt to amend the rules of procedure of the Economic and Social Council by adding a footnote to an existing rule. That was a totally negative procedure. He had ascertained that there were eight definitional footnotes in all in the rules of procedure; in no case did a footnote amend a rule. The proposal before the Sub-Commission was a de facto amendment to the rules of procedure. Moreover, the use of the word "will" rather than "may" meant that the Sub-Commission would be making a decision which would apply in all cases.
30. The proposed footnote would in addition apply not only in respect of item 6 but would also cover votes under the 1503 procedure. The footnote would have to apply not only to rule 59 but also, in the opinion of the Legal Counsel, to rule 60.
31. He did not propose to submit a formal amendment but thought that the Sub-Commission would also have to stipulate that it would vote by secret ballot "if a majority of members so decides."
32. He requested separate votes on the third and fourth preambular paragraphs and a vote by roll-call on the draft resolution as a whole.

33. Mr. DESPOUY said that rule 78 provided that a rule of procedure might be temporarily suspended provided that 24 hours' notice of the proposal for suspension had been given. If it stipulated that a secret ballot could be taken at the request of a majority of members, the Sub-Commission would be changing only the provision in rule 78 regarding the 24 hours' notice.

34. As regards the obligatory nature of the vote, it was clear that, when there was a consensus, there would be no need for a vote. The Sub-Commission could also decide to have an open vote. If however it should happen that a secret ballot was necessary, it would be enough if a single member so requested. Rule 59 already provided that a single member could request a roll-call vote which was then taken without any need for a preliminary vote.

35. Mr. HELLER said that as regards operative paragraph 1 of the draft resolution proposed for adoption by the Commission on Human Rights, the Economic and Social Council should be requested to consider the matter at its next session.

36. Recourse to secret ballot should not be automatic but it would be difficult for the Sub-Commission to define exactly what the prerequisites should be. In his view it was the responsibility of the Economic and Social Council to define the procedure.

37. Mr. van BOVEN said that where consensus had been reached, members would of course be able to express their views; no special procedure would be involved.

38. Arbitrary decisions must be avoided. Any procedure for a secret ballot must be consistent in its application. He therefore favoured flexibility and could not accept any element of arbitrariness. He preferred the text of the draft resolution as it stood.

39. The three proposals contained in draft resolution E/CN.4/Sub.2/1990/L.7 were complementary. In particular, the draft resolution would suggest that the rules of procedure should be considered in a more comprehensive manner as regards the future; that would be useful.

40. In order to minimize future discussion of the issue, it would be helpful if a decision on draft resolution E/CN.4/Sub.2/1990/L.4 could be reached as soon as possible; there was no assurance however that the parent body would be prepared to adopt it.

41. Mr. EIDE considered that the draft resolution as amended by Mr. Joinet was adequate.

42. Mr. ALFONSO MARTÍNEZ asked whether the sponsors would be prepared to recommend that the draft resolution should apply not only under item 6 but also under the 1503 procedure.

43. Mr. TREAT said that the sponsors were prepared to accept Mr. Alfonso Martínez's proposal.

44. Mr. van BOVEN said that the sponsors would not object to the addition of the phrase "at its next session".

45. The CHAIRMAN invited the Sub-Commission to vote on draft resolution E/CN.4/Sub.2/1990/L.4, as amended. He recalled that, at the request of Mr. Alfonso Martínez, separate votes would be taken on the third and fourth preambular paragraphs and a roll-call vote on the draft resolution as a whole. He requested Mr. van Boven to read out the text of draft resolution E/CN.4/Sub.2/1990/L.4, as amended.

46. Mr. van BOVEN read out the amendments to draft resolution E/CN.4/Sub.2/1990/L.4 that the sponsors had accepted. The footnote to the last paragraph would now read: "It is the understanding that the Sub-Commission on Prevention of Discrimination and Protection of Minorities will vote on resolutions pertaining to allegations of violations of human rights in countries by secret ballot".

47. Mrs. PALLEY asked whose "understanding" was intended.

48. Mr. van BOVEN explained that footnotes usually referred primarily to the understanding of the Economic and Social Council, but the reference was intended for anyone who used the rules of procedure once the Council had approved them.

49. Mrs. PALLEY suggested that the words "It is the understanding" should be replaced by the words "It is understood that".

50. Mr. TREAT accepted the amendment.

51. The CHAIRMAN invited the Sub-Commission to vote on the third preambular paragraph as amended.

52. Mr. van BOVEN, in the reply to a request from Mr. SABOIA, said that the third preambular paragraph would read: "Recalling the Advisory Opinion of the International Court of Justice dated 15 December 1989, and particularly its paragraphs 43, 47, 50, 51, 52, 54 and 55, according to which it is important to ensure, in the interest of the United Nations the independence of the experts,".

53. Mrs. MBONU, speaking in explanation of vote before the vote, said that she would vote in favour of all the operative part of the draft resolution, not because she was in sympathy with its contents, but for the sole reason that it would end the unnecessary debate and the time wasted on an issue which, unless the Sub-Commission invited the Economic and Social Council to take a decision, would come back the following year.

54. The third preambular paragraph, as amended, was adopted by 19 votes to 2, with 3 abstentions.

55. The CHAIRMAN invited the Sub-Commission to vote on the fourth preambular paragraph, as amended.

56. Mr. CISSE (Secretary of the Sub-Commission) read out the fourth preambular paragraph (formerly the sixth preambular paragraph) as amended: "Believing that situations of serious violations of human rights in specific countries which come before the Sub-Commission require the use of a secret ballot to strengthen the independence of the membership,".

57. Mr. ALFONSO MARTÍNEZ said that the word "specific" at the beginning of the second line should be deleted, since it had been deleted in the last line of the footnote.

58. The fourth preambular paragraph, as amended, was adopted by 19 votes to 3, with 2 abstentions.

59. Mr. YIMER, supported by Mr. ALFONSO MARTÍNEZ, said that he had voted against the fourth preambular paragraph because he did not believe that situations of serious violations of human rights needed a secret ballot to ensure the independence of members.

60. The CHAIRMAN invited the Sub-Commission to vote on draft resolution E/CN.4/Sub.2/1990/L.4, as amended, as a whole.

61. Mrs. KSENTINI, speaking in explanation of vote before the vote, said that she would vote in favour of the draft resolution, on the understanding that the Sub-Commission would also examine the proposals in draft resolution E/CN.4/Sub.2/1990/L.7, because the use of a footnote in a rule of procedure was a palliative measure which nevertheless entailed subsequent thorough examination of the problem of the rules of procedure that applied to the Sub-Commission.

62. At the request of Mr. Alfonso Martínez, a vote was taken by roll-call on draft resolution E/CN.4/Sub.2/1990/L.4, as amended.

63. Mr. Eide, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mrs. Bautista, Mr. van Boven, Mr. Chernichenko, Mrs. Daes, Mr. Despouy, Mr. Eide, Mr. Guissé, Mr. Hatano, Mr. Heller, Mr. Ilkahanaf, Mr. Joinet, Mr. Khalifa, Mrs. Ksentini, Mr. Maxim, Mrs. Mbonu, Mr. Merills, Mr. Suescún Monroy, Mr. Saboia, Mr. Treat, Mrs. Warzazi

Against: Mr. Alfonso Martínez, Mr. Tian Jin

Abstaining: Mr. Sachar, Mr. Yimer.

64. Draft resolution E/CN.4/Sub.2/1990/L.4, as amended, was adopted by 20 votes to 2, with 2 abstentions.

Draft resolution E/CN.4/Sub.2/1990/L.7

65. The CHAIRMAN invited the Sub-Commission to consider the draft resolution contained in document E/CN.4/Sub.2/1990/L.7 and the amendments thereto contained in documents E/CN.4/Sub.2/1990/L.12 and L.15.

66. Mr. ALFONSO MARTÍNEZ, introducing draft resolution E/CN.4/Sub.2/1990/L.7, said that it was self-explanatory. It proposed a solution to the problem of the Sub-Commission's rules of procedure which took into account all the ideas that had been expressed during the debate. The proposal in operative paragraph 1 that a number of members of the Sub-Commission should prepare a draft of a new set of rules of procedure would not have any financial implications; and the proposal in operative paragraph 2 would not conflict with the footnote adopted as part of draft resolution E/CN.4/Sub.2/1990/L.4.

67. Mrs. WARZAZI, supported by Mrs. MBONU, disagreed with Mr. Alfonso Martínez. The decision, in operative paragraph 2, not to suspend rules 59 and 60 of the present rules of procedure would conflict with the provisions of resolution E/CN.4/Sub.2/1990/L.4 just adopted.

68. Mr. ALFONSO MARTÍNEZ drew attention to the amendment in document E/CN.4/Sub.2/1990/L.12.

69. Mr. DESPOUY withdrew his amendment in favour of the amendments submitted by Mr. Joinet in document E/CN.4/Sub.2/1990/L.15.

70. Mr. JOINET, introducing his amendments contained in document E/CN.4/Sub.2/1990/L.15, said that the amendment to the second preambular paragraph was the same as the amendment he had proposed to draft resolution E/CN.4/Sub.2/1990/L.4. His amendment to the fourth preambular paragraph was inspired by the Advisory Opinion given in 1989 that a secret ballot would preclude explanations of vote. The Legal Adviser had said that the rules of procedure said nothing about the question of explanations of vote in a secret ballot. Nevertheless, the principle of the secret ballot and confidentiality required that no indication of any sort should be given on how an individual had voted, and the Economic and Social Council should be clear on that point.

71. His proposed amendment to the fifth preambular paragraph was based on the Legal Adviser's opinion on votes by secret ballot. The two rules referred to in his amendment were the only two he had been able to find that had a bearing on the matter, since the Legal Adviser had not mentioned any specific rules. His amendment to operative paragraph 1 was similar to the amendment he had proposed to draft resolution E/CN.4/Sub.2/1990/L.4.

72. Lastly, regarding operative paragraphs 2 and 3, the only difference concerned the question of who should perform the task. He would support the proposal to appoint members of the Sub-Commission, if necessary, but since a working group under the chairmanship of Mr. van Boven was already studying the Sub-Commission's working methods, he would prefer the matter to be handled by the statutory group that already existed.

73. Mr. SUESCUN MONROY said that, while appreciating the efforts of his colleagues, he felt that the only changes in the rules of procedure needed at the present time were of the kind adopted at the preceding meeting.

74. Mrs. WARZAZI said that she had a number of objections to draft resolution E/CN.4/Sub.2/1990/L.7. The Sub-Commission should adopt new tactics on the lines of resolution E/CN.4/Sub.2/1990/L.4. The main concern now seemed to be the question of explanation of votes. Rather than risk rejection of the draft resolution, she felt that it would be better to postpone study of the problem until the following year.

75. Mr. EIDE recognized that there were problems and weaknesses in the way the Sub-Commission worked and there was need for improvement. But improvements could be made without changing the rules of procedure: all that was needed was to apply them. Consideration was already being given to that problem in the working group chaired by Mr. van Boven. He saw no need for a resolution and agreed with Mrs. Warzazi that it would be better to postpone the problem until the following year. He could accept the draft resolution only with Mr. Joinet's amendments. Otherwise he would vote against it.

76. Mr. ILKAHANAF disagreed with the second preambular paragraph. In his opinion there was nothing wrong with the rules of procedure. He agreed with Mrs. Warzazi that it would be better to postpone the matter and await the decision by the Economic and Social Council on the proposals in resolution E/CN.4/Sub.2/1990/L.4.

77. Mrs. KSENTINI found the draft resolution very interesting, since it would enable the Sub-Commission to deal with its perennial problem of the rules of procedure to apply to organs composed of independent experts. She did not agree with the idea of postponing consideration and thus losing a year. If the Economic and Social Council took a long time to respond, the Sub-Commission would have to take up the question as soon as possible. She was in favour of establishing a working group or assigning the task to chosen members of the Sub-Commission.

78. Mr. JOINET said that the question of alternates had now been settled, and the remaining part of draft resolution E/CN.4/Sub.2/1990/L.7 dealt with the issue of the secret ballot. He therefore wondered if there were any rules of procedure that really did pose a problem. The fact that the Sub-Commission was an expert body did not really involve a problem; the question of the consideration of item 6 in public was not covered by the rules of procedure but would be dealt with by the working group chaired by Mr. van Boven. The problem of non-governmental organizations was not covered by the rules of procedure either and should be considered in quite another context, as suggested by Mrs. Warzazi.

79. He therefore concluded that draft resolution E/CN.4/Sub.2/1990/L.7 was unnecessary unless the sponsors could list problems for the solution of which a working group was needed.

80. Mr. GUISSSE suggested that to save time the Sub-Commission should defer consideration of the draft resolution to a later date and request a group of members to put forward suggestions for consideration at the next session.

81. Mr. ALFONSO MARTÍNEZ, speaking solely on his own behalf since he had been unable to contact the other sponsors of draft resolution E/CN.4/Sub.2/1990/L.7, said that he would oppose any proposal that the Sub-Commission should postpone a decision until the following year.

82. Turning to the proposed amendment to the second preambular paragraph of draft resolution E/CN.4/Sub.2/1990/L.7 in E/CN.4/Sub.2/1990/L.15, he said that in Spanish at least the words "such as those of the Sub-Commission" were not clear. He would be prepared to accept the words "who should enjoy guarantees of independence" but wished to delete the reference to the specific paragraphs of the advisory opinion of the International Court of Justice, leaving only the words "as emphasized by the International Court of Justice in its advisory opinion of 15 December 1989".

83. He could not accept Mr. Joinet's explanation with regard to the proposed amendment to the fourth preambular paragraph. The opinion of the Legal Adviser that the suspension of rule 59 for the purpose of taking certain decisions by secret ballot also ruled out the application of rule 60 regarding explanations of vote applied to explanations both before and after the vote.

84. With respect to the proposed amendment to the fifth preambular paragraph, he did not understand the reference to rule 5, paragraph 4 (ii) of the rules of procedure, but could accept that amendment.

85. He could agree to replacing the words "as an expert body" by "as a body of independent experts" in operative paragraph 1. However, the proposal to amend operative paragraphs 2 and 3 was unacceptable. The proposed amendment did not make it clear to which Working Group it referred and it changed the idea of the original text in E/CN.4/Sub.2/1990/L.7.

86. He thought that the Sub-Commission must now proceed to a vote.

87. Mrs. WARZAZI, supported by Mr. EIDE, said that she hoped that the Economic and Social Council would take a decision on resolution E/CN.4/Sub.2/1990/L.4 at its next session. However, she did not wish the Sub-Commission to take a vote on draft resolutions E/CN.4/Sub.2/1990/L.7 and L.15 because it might be a negative one. She therefore proposed, pursuant to rule 57 of the rules of procedure, that the Sub-Commission should decide to postpone study of draft resolution E/CN.4/Sub.2/1990/L.7 and the amendments in draft resolution E/CN.4/Sub.2/1990/L.15 until its next session.

88. The CHAIRMAN inquired whether the Sub-Commission was prepared to adopt Mrs. Warzazi's proposal by consensus.

89. Mr. ALFONSO MARTÍNEZ requested a roll-call vote.

90. Mr. Joinet, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mrs. Bautista, Mr. Eide, Mr. Guissé, Mr. Merills,
Mr. Suescún Monroy, Mr. Savoia, Mrs. Warzazi

Against: Mr. Alfonso Martínez, Mr. Joinet, Mrs. Ksentini, Mr. Tian Jin

Abstaining: Mr. van Boven, Mr. Chernichenko, Mrs. Daes, Mr. Despouy,
Mr. Hatano, Mr. Heller, Mr. Khalifa, Mr. Maxim, Mrs. Mbonu,
Mr. Sadi.

91. The proposal by Mrs. Warzazi was adopted by 7 votes to 4, with 10 abstentions.

Elimination of racial discrimination (agenda item 5)

(a) Measures to combat racism and racial discrimination and the role of the Sub-Commission (continued) (E/CN.4/Sub.2/1990/L.2)

Draft resolution E/CN.4/Sub.2/1990/L.2

92. At the request of the CHAIRMAN, Mr. MERILLS confirmed that draft resolution E/CN.4/Sub.2/1990/L.2 had been withdrawn.

Protection of minorities (agenda item 18) (continued)
(E/CN.4/Sub.2/1990/L.8/Rev.1)

Draft resolution E/CN.4/Sub.2/1990/L.8/Rev.1

93. Mrs. DAES, introducing draft resolution E/CN.4/Sub.2/1990/L.8/Rev.1, on behalf of Mr. Chernichenko, Mr. Hatano, Mr. Heller, Mr. Ilkahanaf, Mr. Joinet, Mrs. Palley, Mr. Sachar, Mr. Treat, Mr. van Boven, Mr. Yimer and herself, said that the main purpose of the resolution, which was based on the Sub-Commission's discussion on item 18, was the preparation of an in-depth report on the protection of persons belonging to minorities. Operative paragraph 1 expressed the Sub-Commission's deep appreciation to the Special Rapporteur, Mr. Eide, for his progress report. Operative paragraph 5 requested the Secretary-General to submit the questionnaire annexed to his report as supplemented and amended by the Special Rapporteur to Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations for their comments, views and relevant information. Operative paragraph 6 requested the Secretary-General to give the Special Rapporteur all the assistance he might require to accomplish his work successfully. In that connection, the drafters would like expert assistance to be included in the financial implications. Operative paragraph 8 recommended a draft resolution for adoption by the Commission on Human Rights.

94. Since the text and context of the draft resolution had already been discussed in the Sub-Commission she hoped that it could be adopted without a vote.

95. Mr. SADI drew attention to the third preambular paragraph, and said that, as currently drafted, the text could lend itself to various interpretations. He therefore proposed to delete the words "which may result ... minorities".

96. The wording of the fourth preambular paragraph needed to be clarified. He suggested the wording "Convinced that the Sub-Commission can best contribute to preventing minority-related conflicts ...".

97. He considered that the language of operative paragraph 3 was better suited to the preambular part of the resolution.

98. In reply to a question by Mr. ALFONSO MARTÍNEZ, Mr. PACE (Chief, External Relations, Publications and Documentation, Centre for Human Rights) said that the financial implications of draft resolution E/CN.4/Sub.2/1990/L.8/Rev.1 would be circulated in document E/CN.4/Sub.2/1990/L.17. The secretariat would present the financial implications orally prior to the vote to enable the Sub-Commission to continue its consideration of the draft resolution.

The summary record of the second part of the meeting
appears as document E/CN.4/Sub.2/1990/SR.24/Add.1.



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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE SECOND PART* OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 23 August 1990, at 4 p.m.

Chairman: Mr. TURK

later: Mr. TREAT

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* The summary record of the first part of the meeting appears as
document E/CN.4/Sub.2/1990/SR.24.

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shortly after the end of the session.

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1. Mrs. WARZAZI supported the amendment proposed by Mr. Sadi to the third preambular paragraph since, in her view, ethnic conflicts were not invariably caused by the failure to take further social and legislative measures on behalf of minorities. Furthermore, she perfectly understood that the Sub-Commission should express its "deep appreciation" to Mr. Eide in paragraph 1 but she wondered why, in a second preambular paragraph, it merely expressed "appreciation" to Mrs. Palley for her proposals. Was that difference of terminology due to the fact that the two experts were of a different sex? Finally, she thought that in paragraph 3 the verb "Considers" was not strong enough and therefore proposed to replace the words "Considers that throughout the world there are serious problems ..." by "Takes note with concern of the existence, throughout the world, of serious problems ...", which she found more appropriate.
2. Mrs. KSENTINI agreed with Mrs. Warzazi that the Sub-Commission should express the same degree of satisfaction with Mrs. Palley's work and that of Mr. Eide although she thought that the difference stemmed merely from a stylistic error.
3. She supported the amendment proposed by Mr. Sadi to the third preambular paragraph since she failed to see to what the expression "further appropriate legislative, administratively and social measures" referred. She considered, however, that ethnic conflicts, although serious, were not among the most destructive situations reviewed by the Sub-Commission since there were others, such as apartheid, which were still more destructive. She therefore suggested that the entire text of the third preambular paragraph should be replaced by the text of operative paragraph 3, as amended by Mrs. Warzazi.
4. Finally, she wondered if it was really necessary to mention, in paragraph 6 of the draft resolution, that Mr. Eide's study was difficult and complex. The studies undertaken by special rapporteurs were usually difficult and complex and it might be better to delete those two adjectives.
5. Mr. MAXIM supported the amendments proposed by Mrs. Warzazi and Mrs. Ksentini.
6. Mr. SUESCUN said that the draft resolution was an extremely important one since it addressed the question of minorities, a contemporary problem and the rationale of the Sub-Commission. It would be worth while to review the present situation of minorities throughout the world; such an exercise had apparently never been carried out and Mr. Eide's study might provide a good opportunity of doing so.
7. Mr. ILKAHANAF acknowledged that the task of all the special rapporteurs was difficult and complex but Mr. Eide's task would be particularly so and, consequently, he thought that it would be better to retain the words "difficult and complex" in operative paragraph 6 of the draft resolution.

8. Mrs. DAES speaking on behalf of the nine sponsors of draft resolution E/CN.4/Sub.2/1990/L.8/Rev.1, said that she had no objection to replacing the present text of the third preambular paragraph, as Mrs. Ksentini had suggested, by that of operative paragraph 3, as amended by Mrs. Warzazi. The paragraph would then read: "Expressing concern that throughout the world, there are serious problems arising from interethnic and intergroup conflicts".

9. She recalled that there had been an earlier proposal to indicate in operative paragraph 4 of the draft resolution which the Sub-Commission recommended for adoption by the Commission on Human Rights, at the end of draft resolution E/CN.4/Sub.2/1990/L.8/Rev.1, that the technical assistance made available to the Special Rapporteur might also be in the form of a technical meeting of experts for three days. Since the sponsors of the draft resolution had agreed to that proposal, the text of the paragraph would be amended accordingly. In conclusion, she said that the sponsors also agreed to the amendment proposed by Mr. Sadi to the fourth preambular paragraph.

10. Mr. SADI read out, at the request of Mrs. Ksentini, the text of the amendment which involved replacing the words "can best contribute to preventing situations involving minorities" in the fourth preambular paragraph by "can best contribute to preventing minority-related conflicts ...". The amendment was simply one of terminology.

11. Mr. EIDE said that the Sub-Commission had the task of finding a way of preventing large-scale human rights violations in situations involving minorities. Consequently, he suggested that the sentence in question should be amended as follows: "can best contribute to preventing large-scale human rights problems in situations involving minorities", if that formulation was acceptable to Mr. Sadi.

12. Mr. MAXIM pointed out that a meeting of the CSCE countries would be held in Switzerland on the question of minorities in 1991 and he thought it would be useful if Mr. Eide attended it. He therefore suggested that the Secretariat take account of it in the financial implications of the draft resolution.

13. Mr. HATANO inquired whether the words "difficult and complex" in operative paragraph 6 of the draft resolution would be deleted, as Mrs. Ksentini had proposed, or retained as Mr. Ilkahanaf wished.

14. Mrs. KSENTINI pointed out that she had not formally proposed the deletion of those words. She simply raised the question of the need for them but would not object to their retention if the sponsors so decided.

15. Mrs. DAES said that she had no objection to the deletion of those words. Paragraph 6 would therefore read as follows: "Requests also the Secretary-General to give the Special Rapporteur all the assistance he may require to enable him to carry out his study and to accomplish his work successfully".

16. Mr. ILKAHANAF associated himself with the view expressed by Mrs. Daes and therefore agreed to the deletion of the words "difficult and complex" in paragraph 6 of the draft resolution.

17. Mr. EIDE said that he had already carried out three studies but that none of them had been as difficult and complicated as the present one. The task entrusted to him was enormous and special and it therefore seemed to him worth while to stress that fact in the draft resolution by retaining the words "difficult and complex" in paragraph 6.
18. Mrs. DAES understood that Mr. Eide should emphasize the difficulty of his task and that it should be recognized. Having said that, she nevertheless proposed, in a spirit of compromise and in order to meet Mrs. Ksentini's wishes, to delete those words.
19. Mr. CISSE (Secretary of the Sub-Commission) recapitulated all the amendments proposed by members of the Sub-Commission and accepted by the sponsors of the draft resolution (E/CN.4/Sub.2/1990/L.8/Rev.1).
20. The wording of the third preambular paragraph was replaced by the following wording: "Expressing concern that throughout the world, there are serious problems arising from interethnic and intergroup conflicts".
21. The fourth preambular paragraph read at present as follows: "Convinced that the Sub-Commission can best contribute to preventing large-scale human rights problems in situations involving minorities by studying and promoting positive measures for the protection of minorities and for the peaceful and constructive solution of problems concerning them within the State in which they live".
22. In paragraph 6, the words "difficult and complex" were deleted and paragraph 4 of the draft resolution which the Sub-Commission recommended to the Commission on Human Rights for adoption was amended as follows: "Requests the Secretary-General to give the Special Rapporteur all assistance, including a technical meeting of experts for three days, which he may require to enable him to carry out his work successfully".
23. Mrs. KSENTINI said that she would like an assurance that paragraph 3 was being deleted since Mr. Cisse had not said anything to that effect. She would also like the word "deep" to be inserted before the word "appreciation" in the second line of the second preambular paragraph.
24. Mrs. DAES confirmed that paragraph 3 was being deleted since the text of the paragraph, as amended by Mrs. Warzazi, now formed the text of the third preambular paragraph. She endorsed Mrs. Ksentini's proposal that the Sub-Commission should express its "deep appreciation" to Mrs. Palley in the same way as it did later on to Mr. Eide. She took the opportunity to say that it would be useful for Mr. Eide to be invited to attend the meeting on minorities to be held in Geneva by the CSCE, as Mr. Maxim had suggested.
25. Mrs. WARZAZI commented that in the second preambular paragraph, the Sub-Commission reproduced the text of its resolution 1989/44 of 1 September 1989. It was therefore important to check the exact terms used in it since the text of a resolution already adopted could not be amended. If the word "deep" did not appear in the text, it would be impossible to insert it in the second preambular paragraph, even though one might regret that Mrs. Palley was being treated differently.

26. Mrs. DAES confirmed, after verifying, that the words "expressed appreciation to Mrs. Palley" were those that appeared in Sub-Commission resolution 1989/44 and that, consequently, she was unable to accept Mrs. Ksentini's proposal.

27. Mr. PACE (Centre for Human Rights), introducing the financial implications of draft resolution E/CN.4/Sub.2/1990/L.8/Rev.1, which would be published in document E/CN.4/Sub.2/1990/L.17, said that the cost of the activities envisaged in the draft had been calculated on the basis of the programme which the Special Rapporteur proposed to follow in order to carry out his mandate. The total expenditures relating to the collection and analysis of data on national experiences concerning minorities, the services of a specialist in the field of minority rights for two three-month periods in 1990-91 and 1991-92 respectively and the visits by the Special Rapporteur to approximately three capitals in order to make contact with Governments and to Geneva for consultations with the Centre for Human Rights in 1991 and 1992 would be \$US 29,500 in 1990 and \$27,000 in 1991. An amount of \$15,000 was also estimated to meet the costs of a meeting of experts to examine the information collected and to exchange views on the progress reports prepared by the Special Rapporteur prior to the submission of his final report to the Sub-Commission. The five experts coming from the regions of Africa, Latin America, North America, South Asia, Eastern Europe and Western Europe would be convened in their personal capacity and would meet for three working days in the autumn of 1991 in Geneva. The estimated cost of the necessary conference servicing was still to be determined. Those figures were only approximative; the Special Rapporteur might need additional resources in order to carry out his task successfully.

28. Mr. ALFONSO MARTINEZ inquired whether the cost of the meeting of experts would be financed under section 23 of the budget, as were most of the activities of the Centre for Human Rights or whether, since those resources were already rather limited, other resources would be used, such as those provided under the advisory services programme.

29. Mr. PACE (Centre for Human Rights) said that the \$15,000 for convening the meeting of experts envisaged in the draft resolution would, unless otherwise stated, be taken from the resources generally allocated to human rights. Conference servicing costs would, of course, be financed under section 29 of the conference servicing budget.

30. Mrs. KSENTINI said that she assumed, on the basis of what Mr. Pace had said, that there might be other expenditures in addition to those indicated. She would therefore, like to know whether the credits provided would be simply revised in the light of the Special Rapporteur's needs or whether additional credits would be necessary and would therefore appear in the financial implications submitted to the Commission on Human Rights for approval.

31. Mr. PACE (Centre for Human Rights) said that there was no intention of granting further credits. The point at issue was the section of the budget under which the expenditures estimated for the activities in the draft resolution would be financed. In principle, they would be met from the resources provided under section 23 of the budget relating to human rights, unless it appeared that the nature of some of the activities in question made it appropriate for them to be financed under another section of the budget, such as the advisory services programme in the case of the meeting of experts.

32. Mrs. KSENTINI inquired whether the financial implications given orally by Mr. Pace were final and whether they would be submitted in writing to the Commission on Human Rights and to the Economic and Social Council.

33. Mr. PACE (Centre for Human Rights) said that the figures given were for the total expenditures currently envisaged. The amounts in question, however, were estimates which, as their name indicated, were not the final financial implications of the draft resolution.

34. The CHAIRMAN invited the Sub-Commission to take a decision on draft resolution E/CN.4/Sub.2/1990/L.8/Rev.1 since all the explanations requested had been given. If there was no objection, he would take it that the draft resolution was adopted without a vote.

35. It was so decided.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES (continued)

(a) QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION AND IMPRISONMENT

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(d) THE RIGHT TO A FAIR TRIAL (agenda item 10) (continued)
(E/CN.4/Sub.2/1990/20 and Add.1, 21, 22, 23, 25, 26 and Add.1 and 2, 27, 29, 33 and Add.1, 34; E/CN.4/Sub.2/1990/NGO/1, 4, 18; E/CN.4/1990/14; E/CN.4/Sub.2/1989/23, 27, 28, 29 and 30/Rev.1)

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (continued) (E/CN.4/Sub.2/1990/35; E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1)

36. Mrs. WARZAZI said that the members of the Sub-Commission had agreed after holding private consultations, that the consideration of agenda items 10 and 11 ought not to be an occasion for reopening the debate on item 6. Non-governmental organizations should therefore limit their statements to comments and proposals relating to the studies presented under the two items and should refrain from referring to individual human rights violations.

37. Mr. JOINET, introducing his revised report on the practice of administrative detention (E/CN.4/Sub.2/1990/29) said that he had endeavoured to indicate guidelines for collecting information for what might become an annual report on the subject.

38. The determination of the scope of the study had prompted four major observations. First of all, it had become apparent that virtually all countries practised administrative detention either de jure or de facto, and that the problem was therefore not one of geography. Since administrative detention was not, in principle, forbidden by international standards, what needed to be addressed were the conditions in which it was applied and the safeguards prescribed by the law and the conformity of those safeguards to international standards, provided that those standards were adequate.

Moreover, in far too many countries, administrative detention was no longer an exception but was tending to become the rule, not only when states of emergency were declared but also under internal security or State security laws, which remained permanently in force. Administrative detention was therefore often used to halt criticism or eliminate political opposition.

39. The terms used to describe that form of detention were extremely varied and in order to avoid any conflict of interpretation, preference had been given in the French text to the term "détention administrative" which corresponded to the English term "administrative detention" and the Spanish term "detención administrativa".

40. Third, a rigorous definition was needed to permit a clear distinction to be drawn between administrative detention and judicial detention in all its forms. For the purposes of the study, therefore, he had considered detention as "administrative detention" if, de jure or de facto, it was ordered by the executive alone and the power of decision rested solely with the administrative authority, even if a remedy a posteriori did exist in the courts, since the courts considered only the lawfulness of the decision or its proper enforcement but not the decision itself. Consequently, situations involving irregular or arbitrary judicial detention and situations of detention in custody in police premises were therefore excluded from the study with the exception of certain cases indicated in paragraph 23 of the report.

41. Fourth, the situations giving rise to administrative detention measures were very varied. Primarily, they were situations threatening public order and State security, notably during crises; in that connection, he referred the members of the Sub-Commission to the successive reports by Mr. Despouy on the subject, with particular attention to that part of the report devoted to the new legislation in Namibia. Measures relating to the status of foreigners, especially in the developed countries, sometimes gave rise to administrative detention measures. The situation of asylum seekers or political refugees was particularly disquieting because of the scale of the phenomenon and its complexity at the political level as attested by the work of the International Conference on Indo-Chinese Refugees, held in Geneva on 13 and 14 June 1989. He invited the members of the Sub-Commission to refer to paragraphs 33 to 36 of the report which dealt with Vietnamese refugees and asylum seekers and to paragraphs 37 and 38 which dealt with the Khmers detained in camps in Thailand and whose situation was further complicated by the fact that they were not regarded as refugees but as displaced persons. Administrative detention for purposes of "political re-education" used mainly in Viet Nam and whose main characteristics were described in paragraph 42 of the report was a third kind of administrative detention. It must be condemned on the grounds of its objective since it constituted a gross violation of two stipulations in the International Covenant on Civil and Political Rights, namely, article 18 which guaranteed the right to freedom of thought and of belief and article 14, paragraph 3 (g) which stated that no one might be compelled to testify against himself or to confess guilt. Finally, administrative detention could be applied significantly in the context of disciplinary measures and measures to combat social maladjustment. The administrative detention of mentally-ill persons had not been studied because the Commission on Human Rights had established a Working Group to consider that question.

42. The legal basis for administrative detention varied a great deal from one legal system to another and he invited members of the Sub-Commission to refer

to chapter V of the report which dealt with that question. In particular, he drew attention to paragraphs 58 to 63 which addressed the question of when isolation in detention could be likened to cruel, inhuman or degrading treatment or to torture. A distinction was also drawn between the various forms of isolation and notably between ordinary isolation and rigorous isolation. The issue was a difficult one which easily gave rise to kangaroo courts. In paragraphs 64 to 71, the accent was placed on the intangible character of a remedy in the form of a habeas corpus or a recurso de amparo type of procedure. There were certain rights from which no derogation was possible, notably the rights which protected life and included, for example, the prohibition of summary executions, torture and cruel, inhuman or degrading treatment. However, most of the other rights could be restricted, if restrictions were stipulated by the law as, for example, in cases of an affront to morality or a breach of public safety. States tended to take advantage of that possibility and therefore to restrict the right of remedy. In its advisory opinion of 6 October 1985, requested by the Government of Uruguay, the Inter-American Court of Human Rights considered that the minimum guarantees established to ensure respect for the rights which were declared naturally intangible should themselves be regarded as intangible "because of their purpose", as it were. What was at stake was considerable since available information tended to show that the most serious violations invariably occurred in the first hours or the first days following an arrest and that legal machinery was the only way of guaranteeing a minimum amount of judicial control.

43. He also referred the members of the Sub-Commission to chapter VI of the report which listed the numerous procedures utilized to circumvent legal procedures and the various sources of abuse and to chapter VII which contained his recommendations to the Commission on Human Rights. He explained in that chapter that it no longer seemed appropriate to draw up guidelines on the treatment of persons subjected to administrative detention, as had been suggested in 1987, since the General Assembly had adopted the proposal by the Sub-Commission that the Sixth Committee of the General Assembly should amend the draft Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment which it was then considering so as to extend it to all forms of detention, and hence to administrative detention, since there could not be different degrees of the right to be properly treated.

44. After mature reflection, it also seemed to him that the appointment of a special rapporteur to study the evolution of the practice of administrative detention throughout the world, in all its forms, as proposed in paragraph 82 of the report, was no longer the best solution since the Body of Principles for the Protection of Detainees would henceforth be applicable to all forms of detention. It might be better to introduce a new concept of "prohibited" or "wrongful" detention, whether judicial or administrative, which might be studied by a working group composed of six experts, each specializing in a particular field, namely, administrative detention, judicial detention, the detention of minors and the large-scale detention of displaced persons or refugees. His suggestion might be unrealistic but also deserved to be taken into consideration. Consequently, if the Sub-Commission authorized him to do so, he would like to draft new conclusions which could be annexed, either to his report or to the report of the Sub-Commission, so as to enable the Commission on Human Rights and the Economic and Social Council to examine that proposal specifically if they considered it worth while.

45. Mr. Hatano took the Chair.

46. Mrs. BAUTISTA, introducing the updated version of her report on the protection of the human rights of United Nations staff members, experts and their families (E/CN.4/Sub.2/1990/30), drawn up pursuant to Sub-Commission resolution 1989/30, said that it contained the information received, in conformity with that resolution, from Governments, specialized agencies and other intergovernmental organizations concerning cases of arrest, detention, disappearance or abduction of staff members of the United Nations or the specialized agencies. It also indicated the practical measures taken to secure the protection of those persons and to provide medical assistance to those who were in detention and whose state of health was reported to have worsened.

47. The annual reports of the Secretary-General to the General Assembly on respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations, the discussions in the Fifth Committee and the reports containing the views of the staff representatives of the United Nations Secretariat submitted to the General Assembly, as well as the advisory opinion rendered on 15 December 1989 by the International Court of Justice, in accordance with Economic and Social Council resolution 1989/75 had also been used by her as sources of information.

48. Since 1980, the question of the privileges and immunities and of the human rights of officials of the United Nations system and of their families had been the object of the attention of various United Nations organs and, in particular, of the Commission on Human Rights which had expressed its concern at the situation at its forty-sixth session, in resolution 1990/31. The General Assembly had also taken note with grave concern, in its resolution 44/186 of 19 December 1989, of the report submitted by the Secretary-General (A/C.5/44/11) and had urged the Secretary-General to follow up all cases of arrest, detention and other matters relating to the security and professional activities of officials of the United Nations and the specialized agencies and related organizations. In 1982, the United Nations and the specialized agencies had established the procedure to be followed in the event of the arrest, detention or death of staff members and had taken measures to enhance the security and independence of the staff members of the United Nations in duty stations where living conditions were difficult. The report also contained information on individual cases of violation of the privileges and immunities of officials of the United Nations system as well as on cases of disappearance or murder.

49. It had become apparent that United Nations agencies had always encountered difficulties in obtaining information from Member States about the fate of certain of their staff members who had been arrested or who had disappeared and that they took measures to ensure that those who had been located received care or medical assistance. The co-operation of Member States was, however, essential as the General Assembly and Commission on Human Rights had stressed repeatedly in their resolutions and statements on the question. That was why she was firmly convinced that the organization of a large-scale information campaign would be an effective way of combating those violations of the privileges and immunities of staff members of United Nations agencies; she also believed that the list of all staff members reported missing or in detention and all countries where those events occurred should continue to be published. She also recommended establishing an information

system within the United Nations agencies themselves. She reaffirmed her support for the UNDP proposal that Member States should agree that access by a representative of the organization of which the detained official was a staff member should be granted and that the State should formally explain the reasons for the arrest within 48 hours.

50. She also supported the position adopted by the United Nations Staff Association which had proposed a number of practical measures that should be taken in cases of violation of the human rights of officials of the United Nations system. It had recommended, *inter alia*, the establishment of a medical team to ascertain the conditions in which United Nations staff members were detained and to provide them with assistance, if need be. The Association had also recommended that the contracts of staff members reported to be detained, arrested or missing should not be terminated until their case had been resolved and that financial and other assistance should be made available to their families. She also welcomed the opinion rendered by the International Court of Justice to the effect that experts recruited by the United Nations for a specific task were entitled to the same privileges and immunities as permanent staff members.

51. Finally, she wished to express her gratitude to the Federation of International Civil Servants Associations and the Association for the Security and Independence of International Civil Servants which had greatly assisted her in her task.

52. Turning to the question of the application of international standards concerning the human rights of detained juveniles, she said that she had not had time to incorporate in the report she had been instructed to prepare (E/CN.4/Sub.2/1990/28) the answers to the relevant questionnaires sent to various Governments and non-governmental organizations. In any event, that information was inadequate and she therefore proposed that new requests for information should be addressed to other Governments and other NGOs to enable her to present a comprehensive picture of the situation with respect to application of international standards in existence in that field, also taking account of the recently adopted Convention on the Rights of the Child. She wished, however, to draw attention to the assistance she received from the Defence for Children International Movement which had itself carried out a study on the question and which she would certainly take into account in her final report.

53. Mr. DESPOUY, introducing the updated revised version of his third report (E/CN.4/Sub.2/1989/30/Rev.1) and a working paper (E/CN.4/Sub.2/1990/33) on the questions of human rights and states of emergency, said that considerable progress had been made in recent years in drawing up criteria and standards concerning the legality of states of emergency in order to protect human rights in such situations. His task had been to prepare an annual list of the countries that proclaimed or terminated a state of emergency and to study the information transmitted to him on respect for national and international rules guaranteeing the legality of the introduction of any state of emergency with a view to submitting to the Commission proposals for specific measures designed to afford better protection of human rights in those circumstances.

54. The requisite information had been made available to him by non-governmental organizations as well as by Governments themselves which he had contacted and which had all answered his requests. He regretted that he

had not been able to study and incorporate all the information received in his report. He wished in particular to draw attention to the spirit of co-operation shown by the Soviet Government which had transmitted a considerable amount of information to him and which was to send him shortly the text of a special law on the question of states of emergency the elaboration of which had taken account of the work carried out in the Sub-Commission. That was extremely important since it was the outcome of a collective effort made by a Government and by a number of ministries of that Government to bring internal legislation into line with existing international standards. As soon as he received the text of the law, he hoped to have it translated quickly in order to be able to submit it to the Sub-Commission as a reference model.

55. He also thanked the Governments of Yugoslavia and Senegal for the wealth of information which, regrettably, he had not been able to analyse as he would have wished. In the report, he had concentrated on the individual cases of El Salvador and South Africa, where the situation had recently developed in an extremely interesting way. He had been able to establish regular contacts with the South African Government which had made for an exchange of the contradictory information reflected in the report. It was important to stress that fact since the contact established with the South African Government had coincided with a noticeable, although minimal, improvement in the human rights situation in that country.

56. In the context of his study on the criteria concerning the legality of the state of emergency published in E/CN.4/Sub.2/1990/33 and Add.1 and 2, he had studied the Constitution of Namibia which was, in his opinion, a good example of legal mastery of the problem of the legality of the state of emergency. It might serve as a model for other States when they drafted new constitutions or new standards in that field. He would endeavour to make recommendations in that regard in his next report for notwithstanding the progress achieved in certain countries, it was vital to draw up specific guidelines adapted to various legal systems which could serve as a model for States undertaking constitutional reforms or wishing to amend their internal law. He had already made a number of proposals along those lines in document E/CN.4/Sub.2/1989/30/Rev.1 in which he stressed, *inter alia*, the need to define states of emergency with precision in the standards to be established and to indicate the rights that were intangible, even in a time of emergency. All States should incorporate in their constitutional or legislative order provisions guaranteeing the principle of non-discrimination and making it a right from which no derogation was permitted. Indeed, although discrimination was prohibited in a number of international human rights instruments, non-discrimination was not included as a principle or intangible right.

57. In conclusion, he said how much he appreciated the co-operation of all the non-governmental organizations and Governments with which he had been in contact. He would continue to discharge the task entrusted to him by the Sub-Commission and to update the list of countries that proclaimed or terminated states of emergency and would endeavour to submit to the Sub-Commission a set of general observations on ways and means of guaranteeing respect for human rights in emergency situations.

58. Mr. TREAT, introducing the report prepared jointly by Mr. Chernichenko and himself at the request of the Sub-Commission (E/CN.4/Sub.2/1990/34) on existing international standards on the right to a fair trial, commented, first of all, that the report contained six parts and not seven as has been stated erroneously in paragraph 3 of the English version of the document.

59. The study addressed a question that was eminently apolitical in character and one which the Sub-Commission, as a body of independent experts, was best qualified to consider. Part I of the report listed the principal sources of international fair trial norms including, first of all, the International Covenant on Civil and Political Rights, followed by the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and the European Convention on Human Rights, the Geneva Conventions for the Protection of Victims of War of 1949, and finally the Basic Principles on the Independence of the Judiciary endorsed by the General Assembly 1985 and the Concluding Document of the Vienna Follow-Up Meeting of the representative of the States that had participated in the Conference on Security and Co-operation in Europe. Other provisions relevant to the question were also listed in paragraphs 13 to 24 of the report. In particular, he drew the attention of members of the Sub-Commission to paragraph 19 in which extracts were quoted from the ECOSOC safeguards guaranteeing protection of those facing the death penalty.

60. Part II contained general observations. It stressed the fact that the concept of "a fair trial" concerned both civil and criminal proceedings and that although each type of proceeding had its own character, certain principles could be applied in any court. A distinction was also established between the concepts of objectivity and fairness which, while closely linked, were not quite the same. The concept of fairness related to a sense that justice had been done and the concept of objectivity considered whether the facts had been adduced, whether the facts had been assessed according to the relevant law, and whether the appropriate procedures had been followed. It would therefore be appropriate to define with precision what juridical measures would hope to assure the objectivity and hence the fairness of a trial. Those measures were indicated in paragraphs 33 to 41 of the report.

61. Part III contained an analysis of general fair trial standards, i.e. methods of conducting a trial and approaches to the submission and examination of evidence. It was essential that the trial should be public, except in the event of exceptional circumstances justifying in camera proceedings. The principle of the "equality of arms" between the parties must also be fully respected. Likewise, it should be stressed that, irrespective of its legal system, no Government could decide arbitrarily what constituted a fair, just and objective trial. He referred members of the Sub-Commission to paragraphs 51, 52 and 53 of the report which dealt with the holding of trials in the absence of the parties concerned, the right of anyone charged to have the assistance of an interpreter if he could not understand the language used in court and the independence of the judiciary which was an element essential for a fair trial. That independence should be manifested not only in its organization, but also in the actual proceedings. It could also be assured by clearly defined procedures particularly for the selection of judges and for their training and prohibiting any unlawful outside interference not only by the authorities but also by individuals or pressure groups. Finally, the question of the assessment and examination of evidence gave rise to very

different approaches depending on the country and further thought was needed about the possibilities of formulating rules or standards concerning the requirements for admissibility of evidence and excluding evidence obtained by improper means.

62. Part IV determined the elements of a fair criminal trial encompassing the arrest, interrogation and detention of suspects. That question had already been studied by Mr. Carey. One of the crucial principles in that regard was that anyone suspected of a criminal offence must be brought promptly before a judge and informed of the reasons for his arrest and the charges against him as well as his rights. He referred the members of the Sub-Commission to paragraphs 62 to 132 of the report which considered all the rights of detained persons set forth in the international human rights instruments, including the right to be protected against torture and other cruel, inhuman or degrading treatment or punishment, the right to counsel, the right to appeal to a higher tribunal, the right to seek pardon or commutation of the sentence and the right of redress. Other issues such as the place of the hearing which might on occasion be changed for reasons of security, the acceptance or rejection of confessions of guilt depending on the way in which they had been made, the necessity for the case to be heard by a competent, independent and impartial tribunal established by law, as well as sentencing and punishment were also discussed. The final paragraphs dealt with the procedures for juvenile offenders.

63. Part V indicated the existing standards and factors relevant for considering the right to a fair trial as a non-derogable right. That question had been broached or studied by other rapporteurs and obviously deserved further attention.

64. Finally, the last part of the report recommended that a more comprehensive study of the question should be made on the basis of information received through questionnaires, for example, on the systems existing in various courts of law, with a view to preparing a draft declaration on the right to a fair trial. However, it might be still more preferable to consider the possibility of preparing instead of a protocol or draft declaration a sort of model code, which differed from a standard code, which could be used by States as a model when preparing draft legislation.

65. In conclusion, he wished to stress how much he had appreciated working with Mr. Chernichenko. The unique co-operation between two jurists from two very different countries, with different cultures and legal systems, in preparing a document which might have substantial implications for the future administration of justice, was to the credit of the Sub-Commission.

66. Mr. Türk resumed the Chair.

67. Mr. CHERNICHENKO said that he had also enjoyed working with Mr. Treat, despite the technical difficulties which they had encountered due to the distances separating them. Mr. Treat had already introduced the report so comprehensively that he would confine himself to drawing the Sub-Commission's attention to the fact that the international standards concerning the right to a fair trial were few in number and that in general they referred more specifically to criminal proceedings. That was why stress had been placed in the report on the most general standards that were applicable to all kinds of trials. Some thought should be given to how they might be further expanded.

68. He would also like to have the opinion of the other members of the Sub-Commission on the very general recommendations appearing in paragraphs 41, 49, 50, 51, 52, 55 and 56 of the report. In particular, he would like to know to what extent procedures guaranteeing a fair trial such as the adversary system or the "equality of arms" between the parties existing in some countries might be applied more broadly and brought closer to international standards. The possibility of trying someone in absentia was a question of topical interest for the USSR. Trials of that kind might be useful in certain exceptional cases.

69. In conclusion, he expressed the hope that it would be possible to prepare a declaration on the right to a fair trial and even a voluminous and detailed code incorporating various declarations and documents relating to international standards which would serve all countries as a model.

70. Mr. JOINET, introducing the working paper (E/CN.4/Sub.2/1990/35) prepared by him pursuant to Commission on Human Rights resolution 1989/32, on means in the area of monitoring by which the Sub-Commission could assist in ensuring respect for the independence of the judiciary and the protection of practising lawyers, reminded the Sub-Commission that the words "in the area of monitoring" had been proposed and added in the course of its discussion in order to clarify the mandate.

71. In part I of the report, he had compiled all the basic principles on the independence, on one hand, of judges and, on the other, of lawyers. For the most part, they were the principles adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and the procedures for the effective implementation of those principles adopted by the Committee on Crime Prevention and Control in 1988.

72. Part II of the report contained a list of the main violations of international norms or guidelines relating to the independence of judges or lawyers. He had made use of the list prepared by Mr. Singhvi who, in his study (E/CN.4/Sub.2/1985/18 and Add.1 to 6), had described 26 "types of deviance" relating to judges and 26 others relating to lawyers (paras. 34 to 36). The information furnished by non-governmental organizations or professional organizations of lawyers and special reports such as that of Mr. Wako, the Special Rapporteur on Summary or Arbitrary Executions of the Commission on Human Rights or the report on the work of the Commission's Working Group on Enforced or Involuntary Disappearances revealed a relatively recent trend in many countries of pressure and even death threats directed increasingly against judges and lawyers. He drew attention to a report submitted by the Centre for the Independence of Judges and Lawyers to the Commission on Human Rights describing the cases of 145 judges and lawyers who had been harassed, detained or killed between January 1988 and June 1989 (para. 40).

73. Part III of the report contained some of the measures that had been taken at different levels throughout the world to redress such situations. They included legislative protection, training courses, seminars, education, programmes of advisory services in the field of human rights administered by the Centre for Human Rights in Geneva and the Criminal Justice and Crime Prevention Branch in Vienna, similar activities by United Nations institutes and by certain non-governmental organizations (paras. 44 to 53). The following paragraphs described initiatives taken by members of the legal profession to organize international intra-professional solidarity.

74. In his conclusions in part IV of the report, he recalled that the greater part of United Nations activities in standard-setting were carried out by the Crime Prevention and Criminal Justice Branch in Vienna and that was why the concept of monitoring had been mentioned at the Sub-Commission's previous session. The Sub-Commission should therefore focus its efforts on monitoring. Accordingly, it might instruct one of its members to prepare a report on means of ensuring respect for the independence of the judiciary and the protection of practising lawyers, which would concentrate more particularly on specific situations in order to avoid duplication with the Committee on Crime Prevention and Control in Vienna which was more concerned with elaborating principles. The rapporteur, whose mandate would be limited, could nevertheless co-ordinate his work with the work of the Vienna Committee.

The meeting rose at 9.05 p.m.



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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 25th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 24 August 1990, at 10 a.m.

Chairman: Mr. TURK

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the independence of lawyers

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Commission on Human Rights)

* The summary record of the second part (closed) of the meeting appears
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Sub-Commission at this session will be consolidated in a single corrigendum,
to be issued shortly after the end of the session.

The meeting was called to order at 10.25 a.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES (agenda item 10) (E/CN.4/Sub.2/1990/20 and Add.1, 21, 22, 23, 25, 26 and Add.1 and 2, 27, 29, 33 and Add.1 and 2; E/CN.4/Sub.2/1990/NGO/1, 4, 18; E/CN.4/1990/14; E/CN.4/Sub.2/1989/23, 27, 28, 29 and 30/Rev.1) (continued)

THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (E/CN.4/Sub.2/1990/35; E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1) (continued)

1. Mr. SUESCUN observed that the reports submitted at the previous meeting on different aspects of the administration of justice by Mr. Joinet, Mr. Despouy, Mr. Chernichenko, Mr. Treat and Mrs. Bautista highlighted the importance of that question to the safeguarding of human rights. Without justice, there could be no rule of law. Systematic and thorough study of the functioning of the judicial system was therefore essential, particularly at a time of crisis when its authority tended to be challenged in developing and the developed countries alike. The primacy of law was based on State justice, and experience showed that any attempt to set up a private system of justice was fraught with danger.
2. Regarding the report submitted by Mr. Joinet (E/CN.4/Sub.2/1990/29) on administrative detention, he felt that every possible means should be sought to protect the individual against arbitrary detention. He cited the example of persons such as hostages who were abruptly deprived of their freedom and referred to Commission on Human Rights resolution 1990/36 concerning them. In his opinion, it was important for the Sub-Commission to continue its consideration of all cases of unlawful restraint without exception and to define specific measures for dealing with them.
3. With respect to the report submitted by Mr. Chernichenko and Mr. Treat (E/CN.4/Sub.2/1990/34) on the right to a fair trial, he noted that the subject raised the question of the impartiality not only of the judge but also of the trial. He noted that the rapporteurs recommended the establishment of basic principles to determine the procedures for guaranteeing fairness. What could be done to ensure that an accused person was never denied the right to defence, that the principle of a full hearing was applied in all cases, and that a convicted person always had the possibility of bringing an appeal before a higher court? There were, unfortunately, many countries which still did not provide fair procedures.
4. He was glad to see that the experts wished to codify international procedures applicable both in civil and in penal cases. He referred in that connection to the activities of ILO which, through persistent effort in another area, had succeeded in giving an international dimension to labour law.
5. Mrs. WARZAZI, speaking on a point of order, said she was very concerned about the backlog in the work of the Sub-Commission. She proposed that the public meeting should be suspended for one hour so that members could reach agreement in closed session on immediate measures to enable the Sub-Commission to complete consideration of the items on its agenda.

6. The CHAIRMAN said that, in accordance with rule 49 of the rules of procedure, he would first give the floor to two members in favour of Mrs. Warzazi's proposal and then to two members opposing it, before putting it to the vote.
7. Mr. SADI said he feared that if the meeting was suspended, the discussion would be delayed even further. He proposed that members should meet in closed session early in the afternoon.
8. Mr. JOINET shared Mr. Sadi's opinion and felt that certain decisions could already be taken in public session. He agreed that the time allotted to speakers should be reduced, both for members and for observers for States and non-governmental organizations. The NGOs could, for example, be invited to choose between speaking for 10 minutes on the reports or 7 minutes on a situation of their choosing; members themselves should exercise self-discipline and keep their statements short so that there would be no need for a debate on the re-organization of the work.
9. Mr. SUESCUN seconded Mrs. Warzazi's motion. He felt that members should very quickly be able to adopt specific and effective rules governing the time allotted to speakers.
10. Mr. YIMER supported Mrs. Warzazi's proposal but felt that a one-hour break would be too long. Half an hour should be enough to find an adequate solution.
11. The CHAIRMAN said that if he heard no objections he would take it that the members supported Mrs. Warzazi's proposal to suspend the public meeting so that it would not need to be put to the vote.
12. It was so decided.

The meeting was suspended at 10.45 a.m. and resumed at 11.35 a.m.

13. The CHAIRMAN informed all the participants of the decision taken in closed session by the members of the Sub-Commission in view of the fact that it was behindhand in the consideration of the agenda. The decision concerned the length of statements in the Sub-Commission: the time allocated to all observers for States and non-governmental organizations to speak on any of the remaining agenda items was reduced to five minutes, but could be increased to seven minutes if the statement covered two agenda items taken together. Observers for non-governmental organizations were to give an oral summary of their statements and then distribute the full text to the members of the Sub-Commission. In addition, for the remainder of the session, statements made in exercise of the right to reply should not exceed three minutes. As regards experts, they were invited to speak not more than once on each agenda item and not for longer than 10 minutes. The decision had been adopted without a vote, was effective immediately and would be enforced until the end of the session. He invited the Sub-Commission to continue consideration of agenda items 10 and 11.
14. Mr. TARDU (International Centre of Sociological, Penal and Penitentiary Research and Studies) drew the Sub-Commission's attention to the problem of some 150 United Nations staff members who had been arrested, had disappeared or had been murdered. Such acts threatened the very independence of

United Nations staff members and thus undermined the effectiveness of the Organization at a time when it was being assigned increasingly important peace-keeping tasks. The most frequent victims of such wrongful acts were local staff members recruited on the spot and mistakenly believed by the State of which they were nationals to owe it allegiance. All United Nations staff members, whether local or international, owed loyalty first of all to the United Nations and States should respect their rights. World opinion should be sensitized to the problem and it should be more widely publicized because people were often unaware of it. Deliberative bodies should also give greater support to the actions of the Secretary-General and the Special Rapporteur in that area. The International Centre of Sociological, Penal and Penitentiary Research and Studies suggested that the Sub-Commission should authorize it to visit the countries concerned and look into the situation on the spot, with the consent of the Governments of those countries and in co-operation with the Secretary-General's representatives.

15. Lack of co-ordination within the United Nations system itself between the various bodies and agencies was also a problem that must be solved. For example, there existed seven or eight international procedures for hearing complaints and for investigating cases of torture and arbitrary detention. It would perhaps be useful if the deliberative bodies could agree to work together in that area. Thus, a member of the Vienna Committee on Crime Prevention and Control should be able to take part in the work of the Sub-Commission's Working Group on Detention and vice versa.

16. Lastly, the importance, underlined in Commission on Human Rights resolution 1990/37 of holding seminars and workshops and other forms of technical assistance for training judiciary and police personnel should be re-affirmed. The Centre which he represented had acquired considerable experience in that field, having already organized 11 annual international human rights training courses for magistrates and senior police officials which had brought out the importance of a practical teaching approach with case studies. Police officers should be enabled to benefit from national training programmes in that field and provision should be made for a "human rights" component to be included in systems for the professional rating of police officers, so as to ensure that the provisions adopted by the United Nations on the subject were implemented.

17. Mr. BRODY (International Commission of Jurists), speaking on agenda item 11, congratulated Mr. Joinet on the excellent working paper (E/CN.4/Sub.2/1990/35) which he had submitted to the Sub-Commission and in which it was noted that the Sub-Commission had been given a monitoring task that consisted in drawing attention both to measures that served to strengthen the independence of the judiciary and the protection of lawyers and to those which had the opposite effect. In that connection, the International Commission of Jurists had that same day issued a report which listed the cases of 430 judges and lawyers in 45 countries who had been murdered, arrested, threatened or harassed since June 1989, by interest groups or by the actual Governments of some countries. The situation was particularly critical in Colombia, Sudan, Sri Lanka, Peru, Cameroon, Ghana, Turkey, Argentina, the United States, the Central African Republic, the territories occupied by Israel, Nepal, Somalia, Kenya, Brazil and the Philippines.

18. The conclusions of the report clearly showed the need for the Sub-Commission to study without delay the initiatives advocated by Mr. Joinet, adopt his recommendations and actively follow through with the measures taken to promote the independence of the judiciary and the protection of practising lawyers.

19. Mrs. ROUSSO-LENOIR (International Federation of Human Rights), speaking on agenda item 10, took issue with the statement by the representative of the United States justifying the application of the death penalty to persons under 18 years old on the grounds that his country had not ratified the International Covenant on Civil and Political Rights and that such action was not forbidden either by general or by customary international law. In fact, the non-applicability of the death penalty to persons under 18 was most definitely a rule of customary international law and even a binding rule of jus cogens.

20. Concerning the right to a fair trial, which was the subject of document E/CN.4/Sub.2/1990/34, the International Federation of Human Rights could provide information on the situation in Romania. Nearly 200 persons there, including many adolescents, were being detained in conditions that violated the rules of international law. The period of detention in police custody exceeded the maximum duration of 60 days provided for in the code of penal procedure and the granting of requests for permission to be visited by lawyers was constantly being postponed through dilatory procedures.

21. In China, the obligation to accord those concerned the genuine possibility of a prompt hearing before the judicial authorities after their arrest and of being assisted by counsel was not being fulfilled and situations assimilable to administrative detention had arisen, with all the attendant risks.

22. The International Federation of Human Rights considered there was an urgent need for the Sub-Commission to appoint during the current year a special rapporteur on all forms of pre-trial detention, whether judicial or administrative.

23. Mrs. SALAZAR (International Federation of Human Rights), speaking on agenda item 11, stressed the importance of Mr. Joinet's working paper on the independence of the judiciary and the protection of lawyers (E/CN.4/Sub.2/1990/35). The Sub-Commission had the task of ensuring that the rules guaranteeing such independence were actually applied. It was because of the wide divergence between theoretical standards and their practical application that human rights violations occurred. Guatemala was a case in point. While both the Constitution and the Amparo Act established a proper procedure for filing writs of habeas corpus, matters were unfortunately quite different in practice, as was clearly shown in the report on Guatemala submitted by Mr. Gros Espiell to the Commission on Human Rights (E/CN.4/1990/45).

24. Mrs. SEMSI (World Trade Union Federation) said that the policy pursued by the Turkish colonizing State in Kurdistan was one of genocide. To claim Kurdish identity, speak the Kurdish language, or say that one came from Kurdistan was enough to provoke arbitrary arrest, torture and massacre. Those who resisted deportation were arrested and their houses burnt. Kurdish

peasants and shepherds were murdered, their wives raped and the areas around their villages mined. Thousands had disappeared and the bodies of those who had died under torture were thrown into mass graves.

25. The situation in the prisons was pitiable, for the prisoners had no means of defending themselves and those who objected to the cruel and degrading treatment inflicted on them were subjected to torture. So far, despite all its promises, Turkey had done nothing to improve prison conditions, which were particularly tragic in the case of women, who often had with them young children some of whom had never known freedom. The Sub-Commission and the international community as a whole must, therefore, as a matter of urgency, bring pressure to bear on Turkey to allow commissions of inquiry access to all places of detention in Kurdistan, including those in the military areas or sectors to which entry was prohibited for security reasons. It was particularly important for prisoners held in solitary confinement to be permitted regular visits by representatives of organizations such as the Red Cross. In short, the international community must prevail upon Turkey to respect the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, that it had signed and ratified.

26. Mrs. FARHI (International Council of Jewish Women) observed that the previous year the Sub-Commission had adopted resolution 1989/26 condemning hostage-taking together with the torture and murder which often accompanied it. She hoped that at the present session the Sub-Commission would reiterate in stronger terms its recommendations to Governments on that subject.

27. Her organization wished to draw attention to the responsibility incurred by all Governments which, implicitly, encouraged hostage-takers by agreeing to negotiate with them if States yielded to hostage-takers' demands, there was no reason why the latter should cease their hateful practice when it could be profitable for them.

28. As to the role and responsibility of the media, a thorough scrutiny was called for because it was through them that blackmail operated, anguish was intensified and the hostage-takers thus achieved their ends, whereas silence or discretion on the part of the media might very often foil their evil machinations. Self-censorship by the media was perhaps a utopian dream; their real responsibility consisted not so much in deciding whether or not to talk about hostage-taking as in reporting on it accurately. The right to information was a fundamental one, but a responsible press was in duty bound to assess what was at stake and help democracy defend itself, and not to contribute to weakening it. There was no doubt whatever that modern terrorism was State terrorism and a form of war against the democracies, which it sought to destabilize from within. It was therefore regrettable that it had not been possible to establish genuine international co-operation for combating that scourge effectively.

29. The problem was today more topical than ever because millions of innocent human beings were being used as "human shields" in a country run by a dictator. It should, therefore, be realized urgently that only collective and concerted action could be effective in that regard.

30. Mr. BALIAN (Human Rights Advocates) noted with appreciation Mr. Joinet's report on the practice of administrative detention (E/CN.4/Sub.2/1990/29), especially the administrative detention of refugees and asylum seekers.

31. In the specific case of the Kurdish refugees from Iraq, who were in temporary reception centres in Turkey, the restrictions on their freedom of movement were such that those camps were in effect detention centres. Turkey, which had ratified the 1951 Convention relating to the Status of Refugees and adhered to its 1967 Protocol, had reserved the right to apply those instruments only to persons who had become refugees as a result of events occurring in Europe. Over 55,000 Iraqi Kurds who had sought refuge in Turkey were thus in danger of being turned back or expelled into Iraq, where they faced violations of their rights and fundamental freedoms, including torture, execution or disappearance following arrest. It was therefore regrettable that Mr. Joinet's conclusions and recommendations did not deal with that matter adequately.

32. As far as the Kurdish refugees were concerned, a further complicating factor had been the refusal of the Iraqi and Turkish Governments to allow the Office of the United Nations High Commissioner for Refugees or any other international humanitarian organization to give material and legal assistance to the asylum seekers or to supervise the conditions of their repatriation to Iraq. Whereas Turkish officials denied that there was any forced repatriation, reliable sources attested otherwise. Some "limited" visits by UNHCR had been authorized, but the last had taken place more than six months previously. Furthermore, the time and place of such visits and the contacts made during them were strictly controlled, which prevented UNHCR from performing its humanitarian role.

33. Mr. Joinet's recommendation that a report should be made on all forms of administrative detention could afford some slight protection for Kurdish asylum seekers. Nevertheless, such protection would be possible only if an international humanitarian organization such as UNHCR or ICRC monitored the situation on site, in order to supply the Special Rapporteur with information and thus reduce the risk of refugees being turned back.

34. He invited the Special Rapporteur to consider the possibility of measures being taken to provide protection for asylum seekers and refugees under administrative detention to whom the Convention relating to the Status of Refugees was not applied. Such measures could include supervision by UNHCR, under its extended mandate, of assistance to displaced persons and de facto refugees as well as to refugees under the terms of the Convention, or mandatory surveillance by other competent international humanitarian organizations, including ICRC.

35. Mr. CUSTODIO (Service for Peace and Justice in Latin America), speaking first on agenda item 10, said that the inadequate administration of justice in Honduras was clearly reflected in the lack of respect for the United Nations body of principles for the protection of detainees. Thus, the use of torture was common there and reported instances of it were never investigated, even in case of the death or disappearance of the persons concerned. In 1981, 58.4 per cent of the prison population had not been brought to trial; in August 1986, 84 per cent had not been sentenced; and in 1990, 80 per cent were still awaiting trial. The use of torture by the police force was a common practice, and he was therefore asking the Sub-Commission to examine the question and request the Honduran Government to invite the Special Rapporteur on arbitrary and summary executions to visit the country as soon as possible. He also requested the Sub-Commission to instruct the Group on Enforced and

Involuntary Disappearances to request the Minister of Justice of Honduras to complete his report on the investigation carried out in 1985 into disappearances imputed to the armed forces.

36. With respect to agenda item 11, he said that although it was considered that democracy was expressed through the freedom to vote, that was not the case in Honduras, firstly because of the politicization of the judiciary, as was noted in the study on the administration of justice in Honduras carried out by the Latin American Institute for the Prevention of Crime and the Treatment of Offenders. It was the National Congress which appointed judges to the Supreme Court and therefore the majority party which had control over the judiciary. Secondly, the police were politicized and militarized and the economic corruption of the system lent itself to political pressure, not to speak of the absence of any single, coherent body of law on the organization of the judiciary, the lack of support services, especially in the statistical field, an unfair economic system, dishonesty and staff incompetence, and the lack of any mechanism to ensure the soundness of judicial decisions where the higher courts exercised no formal control over the lower ones. All that was compounded by the impunity stigmatized by the International Commission of Jurists in the June 1990 issue of "The Review".

37. The supremacy of the military authority over the civil authority and the powerlessness of the latter to enforce legality were other major factors in the poor administration of justice and the lack of independence of the judiciary in Honduras. He therefore requested that studies such as the one carried out by the Latin American Institute for the Prevention of Crime and the Treatment of Offenders should be circulated in other Latin American countries, where they could provide food for thought and the subject matter for resolutions, so that positive lessons could be learnt from those experiences. He also asked that similar studies should be carried out on other continents and widely circulated and discussed for the benefit of all if that had not already been done.

STATEMENT BY MRS. QUISUMBING (CHAIRMAN OF THE FORTY-SIXTH SESSION OF THE COMMISSION ON HUMAN RIGHTS)

38. Mrs. QUISUMBING (Chairman of the Forty-sixth Session of the Commission on Human Rights) felt that closer co-ordination and dialogue was needed between the Commission on Human Rights and the Sub-Commission, in order to help identify the issues clearly and find solutions to them. It was with that in mind that the Commission had adopted resolution 1990/64, in which it had also reminded the Sub-Commission of certain principles that should guide its conduct, such as: the impartiality, objectivity and independence of the members of the Sub-Commission and their alternates; genuine expertise of the specialists in the field of human rights as a guarantee of the credibility and effectiveness of the Sub-Commission; systematic preparation of well-researched studies, reports and draft international instruments; consideration by the Sub-Commission, as a body of independent experts, of any new developments in the field of human rights; the importance of the contribution of non-governmental organizations to the work of the Sub-Commission; the importance of the guidance given by the Commission to the Sub-Commission for ensuring the complementarity of their respective activities; and, finally, the obligation of the Sub-Commission to be guided by the relevant resolutions of the Commission and the Economic and Social Council.

39. Commission resolution 1990/64 also reflected members' comments during the forty-sixth session on the report of the Sub-Commission; those comments had been neither all appreciative nor all critical. On the one hand, the Sub-Commission had been praised for its extremely important contribution to setting standards concerning the protection and promotion of human rights. A number of studies carried out by the special rapporteurs had been cited in that connection, including those on the administration of justice, on economic, social and cultural rights, and on the right to leave and return to any country. Other speakers had commended the Sub-Commission's working groups whose efforts had resulted in the development of various international instruments on human rights, such as the Convention on the Rights of the Child.

40. However, some members of the Commission had expressed concern about certain trends in the Sub-Commission. They felt, for example, that the Sub-Commission appeared to be interpreting its mandate increasingly broadly and tended to go beyond it, with consequent overloading of its agenda and duplication of the work of the Commission; also that it spent too much time on politicized debates and adopted a large number of resolutions and decisions on human rights abuse situations. Consequently, the Commission had welcomed as a positive step the Sub-Commission's decision 1989/104 to establish a sessional working group to develop ideas on the means by which the Sub-Commission could better address human rights violations.

41. The Sub-Commission had also been criticized for instructing some of its members to prepare reports and studies not directly relevant to the protection and promotion of human rights and without the participation of all the experts. In that respect, Sub-Commission decision 1990/103 had been well received because it provided for the formulation of a medium-term programme that would ensure the participation of as many as possible of the Sub-Commission's members in those studies.

42. Lastly, with respect to the independence of experts, some members of the Commission had expressed doubts about the decision taken by the Sub-Commission at its forty-first session to suspend rule 59 of the rules of procedure so that voting by secret ballot could take place on certain matters because of the mounting pressure exerted on certain members of the Commission. The Sub-Commission would do well to refer to the summary records of the Commission's discussions in order to see how those various opinions should be interpreted.

43. The Sub-Commission had already taken some positive steps to respond to those criticisms but there was no doubt that, given the growing sensitivity of public opinion in every corner of the world, the constant changes in political, economic and social conditions, and the emergence of new needs, the Commission and Sub-Commission must engage in serious analysis and study to address the new developments in the area of human rights.

44. While, however, the United Nations bodies dealing with human rights were thus called upon to make additional efforts, their resources were, alas, constantly shrinking. The Commission and Sub-Commission must therefore work hand in hand to remedy that situation and respond to the expectations of the international community by establishing closer co-ordination and continuous dialogue. For example, joint meetings of the officers of the Commission and of the Sub-Commission could be held, a working group composed of members of the two bodies could be set up, and the chairmen of the Commission and Sub-Commission could meet every year.

45. Lastly, she referred to the situation in the Gulf and the plight of innocent civilians, nationals of third countries, who were deprived of their right to leave a country freely. Security Council resolution 664, adopted the previous week, called upon Iraq to facilitate the immediate departure from Iraq and Kuwait of nationals of third countries and to take no action to jeopardize the safety or health of such foreign nationals. She urged the Sub-Commission to join in that appeal and to grasp the opportunity to work for the world-wide realization of human rights.

46. The CHAIRMAN thanked the Chairman of the forty-sixth session of the Commission on Human Rights for her perceptive comments, which would most certainly be very useful to the Commission. He proposed that the text of her statement should be published as a document of the present session of the Sub-Commission.

47. The Sub-Commission had not failed to take note of the critical comments made by the Commission because it was the only way to correct any errors and work more effectively. The summary records of the previous session of the Commission on Human Rights had been distributed to the members of the Sub-Commission, who, after studying them and listening to Mrs. Quisumbing, were better aware of the lines on which the Commission wished them to work and the limits it wished to set to the Sub-Commission's activities.

48. Mrs. Quisumbing was absolutely right in saying that the work of the Sub-Commission must be considered within the context of the growing demands which were made on it and which faced all human rights bodies alike with the obligation to find appropriate solutions. It was also true that the Commission and Sub-Commission must work together to that end, for only thus could they contribute more effectively to the protection of human rights. The Sub-Commission, as alive as it was to all the human rights problems faced the world over, was also concerned over the issue of the right to leave any country which Mrs. Quisumbing had raised.

49. The Sub-Commission was aware of the extent of the challenges that it must face, but he firmly believed that it could meet them. The Sub-Commission was also fully aware of the unique opportunity it at present had to communicate directly with the Commission and of the desirability of pursuing that dialogue in order to give real substance to the idea of a productive and effective association between the Commission and the Sub-Commission.

The meeting rose at 1.05 p.m.



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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC) */ OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 24 August 1990, at 4 p.m.

Chairman: Mr. TURK

later: Mr. TREAT

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The administration of justice and the human rights of detainees (continued)

- (a) Questions of human rights of persons subjected to any form of detention and imprisonment (continued)

*/ The summary record of the second part (closed) of the meeting appears as document E/CN.4/Sub.2/1990/SR.26/Add.1.

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- (b) Question of human rights and states of emergency (continued)
- (c) Individualization of prosecution and penalties, and repercussions of violations of human rights on families (continued)
- (d) The right to a fair trial (continued)

Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (continued)

The meeting was called to order at 4.10 p.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES (agenda item 10) (continued)

- (a) QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION AND IMPRISONMENT (continued)
- (b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY (continued)
- (c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES (continued)
- (d) THE RIGHT TO A FAIR TRIAL (continued)

(E/CN.4/Sub.2/1990/20 and Add.1, 21-23, 25 and 26 and Add.1-2, 27, 29, 33 and Add.1-2 and 34; E/CN.4/Sub.2/1990/NGO/1, 4 and 18; E/CN.4/1990/14; E/CN.4/Sub.2/1989/23, 27-29 and 30/Rev.1)

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (continued) (E/CN.4/Sub.2/1990/35); E/CN.4/Sub.2/1988/Add.1 and Add.1/Corr.1)

1. Mr. KESAVAN (Liberation) said that the issue of detention was particularly critical in Sri Lanka as the complete lack of accountability of the Sri Lankan armed forces in that respect had led to human rights violations such as arbitrary killings and tortures.

2. In the Sinhalese dominated south of the country, over 10,000 youths were still in detention with no prospect of release. In the north and east, where the Sri Lankan security forces were pursuing a genocidal campaign against the Tamil and Muslim peoples, civilians were being detained from refugee camps and other places of refuge. On 30 June 1990, 84 civilians had been detained in Veeramunai in the Amparai district and had been taken to the Kalmunai army camp. Four civilians who had escaped had reported the massacre of the remaining 80. In the previous three days there had been many civilian deaths from bombings and a hospital had been destroyed.

3. His organization urged the Sub-Commission to request the Sri Lankan Government to take measures to safeguard the welfare of civilians detained by the security forces and by state sponsored vigilantes.

4. Mr. da COSTA (Liberation) said that he was a Timorese and had spent almost seven years as a political prisoner in Indonesian prisons.

5. While in prison, he and other detainees had been subjected to interrogation and torture including electric shocks, lighted cigarettes applied to the genitals and beatings. Two prisoners in his group had died under torture. No impartial investigation had been made. During that period there had been about 500 prisoners in the Comarca prison including women prisoners who were raped by the guards at night.

6. He had not had a fair trial nor a lawyer of his own choice; the lawyer representing him had been appointed by the military who had previously tortured him. The only evidence against him had been obtained by torture.

Following the trial he had been tortured, beaten, and forced to work like a slave. After a year in prison he had been released but his life continued to be that of a detainee.

7. He appealed to the Sub-Commission to study the situation carefully and to take measures to help procure the release of other detainees like Mariano Bonaparte, David Ximenez, Marito Reis and Albino Lurdes.

8. Mr. HADJAR (Liberation) said that the immigration authorities in Jakarta had once again refused to grant an exit permit to Mr. Haji Princen, the director of the Indonesian Institute for the Defence of Human Rights, who had been mandated by the Regional Council on Human Rights in Asia to inform the Sub-Commission about the numerous violations of human rights in Indonesia.

9. Under agenda item 11, he wished to draw the attention of the Sub-Commission to the cases of violations of the independence of lawyers in Indonesia described in the report of the International Commission of Jurists entitled "The Harassment and Persecution of Judges and Lawyers, July 1989 - June 1990".

10. He urged the Sub-Commission to request the Indonesian Government to permit Mr. Princen to come to Geneva to report on the numerous violations of human rights in Indonesia and to urge the military authorities in Indonesia not to interfere in the affairs of lawyers.

11. Ms. KAKU (Indigenous World Association) said that there was, unfortunately, a continuing pattern of governmental violation of justice and of the right to a fair trial of trade unionists, civil rights fighters and political activists in the United States of America. Among those currently imprisoned unjustly were Leonard Peltier an indigenous political activist seized during a military assault against the Pine Ridge Indian Reservations; Johnny "Imani" Harris who had been in prison for 20 years on false charges of rape and robbery; as well as advocates of Puerto Rican independence. Four members of the United Mineworkers of America had been jailed for their participation in the 1984-1985 strike against the A.T. Massey Coal Company.

12. Her husband, Mark Curtis, was a trade unionist and political activist who had been framed on charges of rape and burglary, after publicly protesting against arrests of immigrant workers by the Immigration and Naturalization Service. He had been jailed, tortured and interrogated without the benefit of an attorney. His trial had been a violation of the right to due process of law. The central witness against him had been a police officer who had been suspended from the police force for lying and fabricating evidence in a previous case. Notwithstanding testimony from Mark's co-workers that he had been with them in a restaurant at the time the alleged victim swore she had been attacked, the judge had refused a defence move to instruct the jury to acquit him. He had been convicted and sentenced to serve 25 years imprisonment. Moreover a suit had been filed against her husband and herself demanding massive punitive damages in connection with the probe into the financing of the Mark Curtis Defence Committee. Such an attempt to intrude into the financing of the Committee was a direct challenge to the right to free political association and threatened defence committees and human rights organizations all over the world.

13. In conclusion, she urged the Sub-Committee to make every effort to bring an end to such violations of democratic rights.
14. Ms. UNDERHILL (International Institute of Higher Studies), also speaking on behalf of the International Association of Penal Law, said that she wished to draw attention to document E/CN.4/Sub.2/1990/NGO.4 submitted by the two organizations which set out the work done and being done in the field of Arab human rights to which reference had already been made by the representative of the Arab Lawyers Union.
15. Mr. WAREHAM (International Association against Torture) said that there were over 200 political prisoners inside the United States federal and state prison systems. The United States Government had stated that those individuals were incarcerated for the commission of "common crimes" and not for their politics. That was a familiar argument which the United States Government had also used in denying that it maintained a political police. He recalled that in the early 1970s the secret Counter-Intelligence Programme of the Federal Bureau of Investigation had been exposed by activists and subsequently denounced by the United States Congress. That programme had been designed to disrupt, destroy and neutralize political movements within the United States by the use of means up to and including violence and assassination.
16. The policy of the United States Bureau of Prisons was geared towards the psychological destruction of political prisoners. The highest level security prison in the United States was at Marion, Illinois. Marion housed federal prisoners who had proved to represent disciplinary problems in other prisons; political prisoners however were routinely sent to Marion directly upon conviction. One inmate had described control unit policies as being based on isolation, separation and controlled movements. There was no exercise equipment, no work, nothing to engage the intellect. Weather permitting, prisoners were allowed outside their cells into a yard once a week for two hours. Marion's contaminated drinking water had caused tumours and other unexplained illnesses among its population; no contact visits were allowed with social visitors and legal visits were monitored by video camera and guards.
17. Political activists had also been subjected to torture and medical treatment had been denied or delayed. The sentences received by political prisoners were longer than those received by non-political offenders convicted of the same crimes. In addition, political prisoners, no matter how exemplary their institutional record, were routinely denied parole. The Bail Reform Act of 1984 had provided for pre-trial detention without bail. Its first application had been in 1984, five days after it became law, to a group of black revolutionaries who had no prior criminal convictions. A Puerto Rican independence activist, Filiberto Ojeda Rios, had been held for four years under that act before being released on bail prior to trial.
18. His organization urged the Commission to appoint a Special Rapporteur to investigate the conditions of confinement of political prisoners in the United States, particularly at the Marion Federal correctional facility.
19. His organization wished also to direct the attention of the Sub-Commission to the situation in Chile where, five months after the installation of a democratic Government, over 260 people of high moral

character who had opposed the military dictatorship, remained incarcerated. At the same time, no members of the State terrorist apparatus had been detained by the new Government, despite the latter's promises to clarify the crimes committed during the 16 years of military dictatorship. His organization therefore asked that the Sub-Commission should use its influence to persuade the Chilean Government to free all political prisoners immediately and unconditionally and to encourage the Government to prosecute the murderers and torturers of the Chilean people.

20. In conclusion, he wished to draw the attention of the Sub-Commission to a disturbing trend in the United States regarding the independence of lawyers. Demands had been placed on certain types of lawyers to violate the confidentiality of the attorney/client privilege; others had been threatened with disciplinary sanctions, including suspension or disbarment or even imprisonment. Those demands had been directed in particular at lawyers recognized for their defense of minorities, the disenfranchised or those who challenged the status quo. At the end of the Brawley case, the State prosecutor had filed a complaint requesting a disciplinary panel to investigate the conduct of the two New York city lawyers, Madox and Mason. Madox had refused to co-operate and had been indefinitely suspended from the practice of law.

21. Mr. Treat took the Chair.

22. Ms. LACOURT (International Federation - Terre des Hommes) invited the attention of the Sub-Commission to the kidnapping of Mrs. Guadalupe Ccallocunto-Olano, a human rights activist in Peru, on 10 June 1990, from her mother's home in Ayacucho at 2.30 a.m. by a group of armed and masked men. At the time of the kidnapping Ayacucho had been under curfew and only military personnel could move freely. The victim had later been seen by a witness at the military barracks at Los Cabitos.

23. A judge in Ayacucho had served a writ of habeus corpus on the local police who, however, along with the military authorities and the Civil Guard had denied that Mrs. Ccallocunto-Olano had been detained in any of their prisons. Since 14 June 1990, her family had received no news regarding her fate.

24. Her organization appealed to the Sub-Commission to invite the new Government in Peru to permit civil justice in Peru to function in accordance with the law; to bring to justice those who had kidnapped Mrs. Ccallocunto-Olano; to elucidate the many cases of arbitrary detentions and disappearances which had taken place in Peru; and to communicate Mrs. Ccallocunto-Olano's place of detention and release her.

25. Mr. SIWACOT (International Human Rights Law Group) said that the International Human Rights Law Group would first like to draw the Commission's attention to the continuing plight of detainees held and treated in violation of international human rights standards in Myanmar and Romania.

26. In Myanmar, notwithstanding the landslide victory at the elections of the National League for Democracy, the people of Myanmar were still under martial law, governed by a military junta that refused to transfer power to the elected representatives. At least 4,000 political prisoners reportedly remained in prison and some had died in custody because of torture,

mistreatment, disease and the lack of proper medical care; at least 100 political prisoners had been sentenced to death by military tribunals. During July 1990, the Government had arrested at least 71 more students and political activists.

27. In Romania, in the early morning of 13 June 1990, police forces had cleared Bucarest University Square of more than 100 peaceful demonstrators and hunger strikers protesting against the newly elected President and his Government. Subsequently thousands of miners from the Jiu valley had intervened and their actions had resulted in at least five deaths and more than 100 injured persons. The Romanian Government had initiated an inquiry into the events related to the miners' actions. The investigation had reportedly been completed and the report was expected soon.

28. The International Human Rights Law Group urged the Sub-Commission to include in its ongoing investigation into the human rights situation in Myanmar a full report on the situation regarding detention, torture and extrajudicial killings; and to request the Special Rapporteur on Romania to make a full report on the events relating to the miners' activities and the Romanian Governments's subsequent investigation and prosecution of those responsible for the violations.

29. Turning to agenda item 11, the International Human Rights Law Group wished to draw attention to the pressure exercised by the authorities on the judiciary and lawyers. In Kenya the rule of law remained at the mercy of political pressures, and, since 1988, no human rights case had reportedly been won in the courts of Kenya. In 1988, an amendment to the Constitution had granted the President the power to suspend judges from office as well as wide discretion to appoint a tribunal to make recommendations as to whether a judge should be removed for inability or misbehaviour. The subsequent lack of an independent judiciary had substantially diluted freedom of expression, assembly and the press. Human rights lawyers had reported frequent harassment and interference from the special branch police officers of the President. Unchecked by an independent judiciary, President Moi had initiated a forceful campaign to quash a debate on a multi-party system in Kenya.

30. The status of the rule of law in Guatemala had steadily worsened during the previous year and criminal justice in that country had reached such a low point that Harvard Law School had terminated its judicial training programme which had operated for the past three years. The judiciary continued to refuse to assume and decide cases involving the military, particularly writs of habeus corpus and amparo. The judicial system also suffered because of the lack of job security and of a merit system of judicial appointment. As a result of the lack of a strong and independent judiciary, the rule of law in Guatemala had virtually disappeared during the past year along with the thousands of Guatemalan victims.

31. Mr. LITTMAN (World Union for Progressive Judaism) said that he would confine himself to the prevention of hostage-taking under agenda item 10(a); however, his full statement was available.

32. Since 1986 he had consistently delivered oral and written statements to the Commission on Human Rights and to the Sub-Commission on the thematic question of hostage-taking for political, religious or ethnic reasons, a subject curiously avoided in plenary meetings until 1989, when the

Sub-Commission had adopted resolutions 1989/26 and 1989/29 following the savage televised execution of the Commander of the United Nations Truce Supervision Organization, Lieut.Col. William R. Higgins in southern Lebanon. Hostage-taking was usually given short shrift at the Commission, too, other than through the adoption of a blanket resolution against it. The omission in Commission resolution 1989/26 of the preambular clause that had appeared in earlier resolutions and had noted with concern the increasing number of instances of hostage-taking involving, more and more often, nationals of States chosen in order to put pressure on those States or on third parties was revealing. Yet that had always been a very pertinent aspect of the issue, especially as the names of the four States behind international terrorism were common knowledge, the more so to-day as a result of the events in the Gulf region. In view of the recent largest-ever hostage haul to date for the purpose of blackmail - undertaken by a member State of the United Nations - it would seem to be a matter of urgency for the Sub-Commission to spare some time for a debate on the thematic question of the inhuman treatment meted out to persons taken as hostages, or forcibly retained against their will by any State or surrogate terrorist body under the control of a State. It was not the time, either for half-measures or compromise resolutions.

33. It had been salutary to read in the International Herald Tribune of 5 April 1990, that the Libyan President himself had stated that Muslims should adhere to the noble Islamic values which affirmed the honour and humanity of man and the non-taking of innocent hostages. The President was now, as he had declared recently, resolutely against all hostage-taking, especially that by President Saddam Hussein.

34. Ms. CHEN (International League for Human Rights) said that during the past year her organization had documented a chilling cycle of repression in China, in particular the severe maltreatment and torture of detainees, the lack of fair trials and judicial safeguards, and the continued use of administrative detention in "reform through labour" camps. During the current year, two former Chinese police officials had provided detailed testimony confirming that practices in detention centres totally disregarded legal rules and procedures.

35. Democracy movement activists and scholars were included in "most wanted" lists, which was one way to "precondemn" individuals. China's emphasis on obtaining confessions from detainees and the practice of "verdict first, trial later" bore testimony to the fact that detainees were indeed "precondemned".

36. The International League for Human Rights had prepared a report entitled Torture in China on the lack of procedural safeguards to protect detainees as well as on the tortures such as beatings, electric shock, shackling with handcuffs in painful positions, etc. to which they were commonly subjected. Evidence from released detainees confirmed that such practices continued and had been used against democracy movement detainees. Her organization had also reported overcrowding and harsh prison conditions. Released students had reported being locked up in cells of 12 ft. by 15 ft. with 14 to 22 other prisoners, and having to sleep on wooden planks on the floor. One student had been punished for singing in his cell; he had been manacled for 18 days, unable to stand up, use the lavatory or feed himself. Another student had reported being in prison for a year, only once being allowed to go out to an open courtyard for fresh air, for half an hour.

37. The International League had recently obtained eyewitness evidence that Chinese authorities had for some time been making unauthorized use of the organs of executed prisoners for medical transplants, without permission from the detainee or the family. That practice, freely admitted to by a number of Chinese hospitals, constituted cruel, inhuman and degrading treatment or punishment, within the meaning of the Convention against Torture, to which China was a party and under which China had undertaken to prevent such conduct within its territory. The Sub-Commission should call upon the Chinese Government to give details of the extent of the practice of using prisoners' organs for transplant, its legality under Chinese domestic law and what steps the Government proposed to take to eliminate it.

38. She also drew attention to the case of Zhang Zhenhai, a pro-democracy dissident, who had hijacked a Chinese aircraft to escape persecution and seek political asylum. The aircraft had landed in Japan on 16 December 1989, Mr. Zhang had been apprehended by Japanese authorities, his wife and son had been returned to China on the same plane with the other passengers and Mr. Zhang had later been extradited and sentenced in July 1990 in Beijing to eight years in prison. Her organization was concerned for the whereabouts, health and safety of Zhang's wife and child and was seeking information from the Chinese Government.

39. The International League for Human Rights urged the Sub-Commission to adopt measures to help to redress the conditions in China today in respect of the administration of justice and the human rights of detainees.

40. Referring to agenda item 11, she said that on 4 June 1989, the very day when troops and tanks had been forcibly ending the pro-democracy demonstrations in Beijing, the Supreme People's Court had telegraphed the Central People's Government to express its support for military suppression of what the Court had characterized as "counter-revolutionary demonstrations in Tiananmen Square". In that astounding declaration of political partiality, the Court was simply echoing executive policy. The President of the Supreme People's Court in a recent speech had stated bluntly, that the independent exercise of judicial power by the people's courts occurred under the leadership of the Party, that the independent exercise of judicial power by the people's courts must be supervised and supported, and that courts at all levels should consciously keep aligned with the central Party political line, obey orders and listen to commands. The partiality and lack of restraint shown by those and similar extra-judicial pronouncements made by judges in China clearly fell under paragraph 35(v) of Mr. Joinet's working paper (E/CN.4/Sub.2/1990/35) and should be of serious concern to the Sub-Commission.

41. A further major functional defect in Chinese law and practice which undermined judicial independence and impartiality was the ineffective provision of security of tenure for judges during their term of appointment. Judges were therefore, in practice, subject to arbitrary transfer, demotion or dismissal.

42. Mrs. GRAF (International League for the Rights and the Liberation of Peoples) said that her organization felt compelled to draw attention once more to the plight of the Kurdish people, concentrating on their repression under states of emergency or exception now in force.

43. In Turkey, under the state of exception and of emergency fundamental rights were restricted and the prerogatives of the executive encroached upon those of the legislature and the judiciary. During more than 40 per cent of the existence of the Turkish Republic, a state of exception or emergency had been enforced in some part of the territory, particularly in the Kurdish areas. The term "exceptional situation" was, therefore, a misnomer for what was in fact the normal state of affairs in Turkey.

44. The state of emergency had come into effect on 25 October 1983 by Law No. 2935. Apart from depriving the local population of its rights, it laid down the legal basis for the current State repression of Kurdistan. That law clearly overrode the provisions of the Constitution, since it provided that the Council of Ministers could during a state of exception, issue edicts having the force of law with regard to all eventualities required by the state of exception, without regard to the limitations and procedures set forth in paragraph 91 of the Constitution. The co-operation between the military and civilian administrations was determined by a protocol agreed between the Minister of Domestic Affairs and the Army Chief of Staff; the Governor of the State of Emergency had recently declared that the valuable experience accumulated by the military during more than seven years of martial law would guide him in implementing the state of emergency. Since 1987 the state of emergency had affected some 5 million people, mainly Kurds.

45. Between 1982 and 1990, over 10,000 people had been brought before the State Security Court, most of them for political crimes or for their opinions, some had been sentenced to long prison terms. Many had been victims of ill-treatment and torture while in detention. Recently, the situation had deteriorated, and in Diyarbakir on 28 May 1990 about 200 people were reported to have been arrested when meeting in front of the headquarters of the Socialist Party. In Dargeçit, in the Mardin province, solidarity on behalf of the families of hunger strikers had been brutally repressed; on 2 June 1990 about 100 people, including 29 women, had been arrested and taken to Mardin for trial, accused of "resisting the authorities" and "participating in demonstrations without authorization". Also under the emergency measures, on 26 July 1990 the only medical doctor for the town of Tunceli had been banished.

46. Inhabitants of the districts of Sirnak, Ertuh, Uludere, Beytüssadebap, Cukurca, Semdine, Silopi and Catak had been deported, their houses set on fire and the mountains and surrounding woods bombarded. Inhabitants of villages and settlements within 15 kilometres of the Iraqi border were also being deported and those who resisted were killed and their houses burnt down. Deported Kurdish villagers were forcibly settled in localities in Cukurca and the village of Arus. She wondered how Turkey could defend Turkish minorities outside the Turkish borders and speak about oppression of Turks in Cyprus and Bulgaria, while it was oppressing the Kurdish people.

47. Since 15 March 1990, 3,000 Kurdish refugees had been sent back from Turkey or, in the words of official sources, "voluntarily returned" to Iraq. Despite the amnesty promised by Iraq, hundreds of civilian refugees had been arrested on their return and accused of being combatants. Some had been executed and others were detained in concentration camps.

48. With regard to the treatment inflicted on the Kurdish people in Iraq in general, the existence of a situation of war was evident and people all over the world had been able to see on television the effects of chemical and

biological weapons on the Kurdish civilian population of Halabja in March 1988. Half a million Kurdish people were said to have been held as hostages for at least 10 years in Nazi-style concentration camps in the south-western desert area of Iraq at Arar, Samawa, Dywana and Rumadi. How long would world opinion tolerate the oppression of more than 20 million Kurdish people by states that had repeatedly shown the contempt in which they held the most fundamental human rights?

49. Ms. JAFFE (International Commission of Health Professionals for Health and Human Rights ICHP) said that since 1985 her organization had been carrying out regular missions to countries where torture was practised. During a preliminary exploratory period, it established contacts with doctors and with human rights defence organizations and subsequently missions had been of a therapeutic nature.

50. In one country, the ICHP team had been to see a hunger striker released after four years' detention, two of them under forced feeding in a hospital, and had then seen some of his fellow detainees, as they were released, thus obtaining information on other forms of detention and on torture. In all consultations, a medical and psychological assessment of the effects of torture, and arrangements for treatment had been made. Meetings had taken place with families of patients, since they were an essential link in the process of rehabilitation.

51. Missions had identified a variety of complaints. Serious psychological or psychiatric disorders, and psychosomatic problems had been found in all patients. Most patients reported torture, particularly under police custody, repeated beatings, electric shock, suspension with feet and wrists bound, repeated blows on the soles of the feet, insertion of objects in the anus, and cigarette burns, being the most frequent complaints. Some had had their eyes bound for long periods.

52. The alleged ill-treatment and torture had taken place in the second half of the 1970s and the beginning of the 1980s, but there was evidence of tortures inflicted in November 1988, when a young woman had suffered electric shock, blows on the soles of her feet, suspension from a bar, for three days, the marks of which were visible. Others had suffered broken teeth and loss of teeth and damage to their gums as a result of blows.

53. Her organization had acquired conclusive evidence of torture in the country. The expulsion of two of its health professionals who were helping the victims of ill-treatment and, the confiscation of medical documents were further evidence. However, the official press denial of that expulsion suggested that a certain sensitivity on human rights was emerging in Morocco - that was the country concerned - and her organization welcomed the decision of the Advisory Council on Human Rights to consider the problem of police detention which was responsible for most of the cases of which she had spoken.

54. Mr. PAUL (International Educational Development, Inc.) said that in 1987 the Inter-American Commission on Human Rights of the Organization of American States had found that the United States of America had violated the right to life by allowing the death penalty for juveniles and mentally retarded persons. The Commission had also found that the human rights law prohibition against juvenile execution was a norm of jus cogens in the Americas and

thereby binding on the United States. However, in defiance of and despite special appeals from that international body, the United States of America had carried out death sentences against the petitioners Terry Roach and Jay Pinkerton, and subsequently, in the case *Stanford v. Kentucky*, the United States Supreme Court had upheld the death penalty for minors and persons who were mentally retarded, asserting that it did not need to take into consideration the international standards of human rights. In the Spring of 1990, the State of Louisiana had carried out the death penalty against Mr. Prejean, an African-American, who had been a minor as well as mentally retarded at the time of the crime, and who had been convicted by an all-white jury.

55. The Government of Japan also persisted in violating clear standards of human rights law in continuing police cell detention (*daiyo kangoku*) and in denying the right to counsel for indigent detainees for 23 days and at all times during police cell interrogation. The European Commission on Human Rights had found six days in police custody to be too long, whereas in Japan, suspects were held for up to 23 days. Regarding the right to counsel, Japan had gravely violated article 14 (3) of the International Covenant on Civil and Political Rights, since there was no effective right to counsel in that country. Japan also admitted as controlling evidence for convictions statements made during interrogation at police cells without counsel. The report entitled Police Cell Detention in Japan - the Daiyo Kangoku System set out in more detail the grave violations of the rights of criminal suspects in Japan.

56. His organization was gravely concerned at the lack of attention given to the situation of persons detained during armed conflict and was particularly distressed at the Sri Lankan Government's announcement of its intention to uproot the entire population of the Jaffna peninsula to place them in detention camps. While detention of civilians might be acceptable in certain circumstances, humanitarian law did not permit military forces to remove an entire people to facilitate attacks on civilian population centres, or the detention of civilians solely on grounds of their political affiliation.

57. In Sri Lanka, the Government was waging war on the civilian population. Reliable reports indicated severe maltreatment and death of persons detained by the Sri Lankan forces in the Sithandi refugee camp in Batticaloa and the forced removal on 5 June 1990 and subsequent disappearance of 10 refugees held at Vantarmullai University. According to the British Refugee Council, 600,000 persons already in camps or dispersed in the north and east were suffering food and medical shortages. Other reports concerning detainees included: the arrest in Colombo and subsequent shooting of 542 Tamil civilians; the detention and mistreatment of 1,002 persons fleeing from Batticaloa to Jaffna; the arrest of 84 Tamil civilians by the Sri Lankan army at Veeramunai of whom four had escaped and had witnessed the massacre of the other 80; the detention by Government forces in Sumanthurai of 57 Tamil and Muslim civilians, who had subsequently been found dead; and the disappearance in Kallaru of about 200 detainees.

58. If the United States of America, Japan and Sri Lanka could escape censure for those grave violations of human rights, the entire régime of international protection of human rights was sorely threatened. He hoped that the Sub-Commission would take forthright action on those and all other cases of violation of the rights of detainees.

59. Mr. EYA NCHAMA (International Movement for Fraternal Union Among Races and Peoples) speaking in connection with the protection of staff members of the United Nations system, said that an increasing number of international civil servants were being detained, were missing and had been killed or had died in detention.

60. The previous day Mrs. Bautista in introducing her report (E/CN.4/Sub.2/1990/30) had said that what was needed was a list of detained officials and of the countries where they were detained, so that a campaign for their release could be carried out.

61. For the information of the Sub-Commission he gave the names of three officials detained in Ethiopia, two in Kenya, one detained in and eight expelled from Mauritania, the name of one person who had been executed in Sudan and one who had been subjected to ill-treatment in prison in Zambia.

62. He suggested that Mrs. Bautista's updated report should include the following recommendations: that sick and detained international civil servants should be allowed visits by independent doctors nominated by the Secretariat; that detained officials should be in constant contact with the Secretariat; that their contracts should be extended automatically and salaries paid to their families pending resolution of their cases; and that all technical and other assistance to countries that violated the human rights of international civil servants and experts should be suspended.

63. He welcomed Mr. Joinet's report on the question of the human rights of persons subjected to any form of detention or imprisonment (E/CN.4/Sub.2/1990/29), particularly paragraphs 32 to 40, and suggested that, in addition to the problem of Vietnamese asylum-seekers, Mr. Joinet should take into account the case of African asylum-seekers in Europe.

64. He agreed with Mr. Despouy that the Namibian Constitution was a model to be adopted by other countries. He pointed out that it was the first African Constitution to limit the presidential term of office.

65. His organization supported the proposal by Mr. Chernichenko and Mr. Treat concerning the preparation of a draft declaration on the right to a fair trial.

66. Mrs. de QUINTEROS (Pax Romana) said that she wished to speak about the concern over Uruguayan disappeared persons felt by their families and by many sectors of the population. Act No. 15.848 adopted in December 1986, sometimes known as the immunity law, gave immunity to members of the military and police who were guilty of serious human rights violations, and enabled the Government to disregard international instruments under which it was committed to investigate and punish violations. Those were the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment and the American Convention on Human Rights.

67. Such immunity prevented any legal investigation of cases and of those responsible, and the families of disappeared people were unable to find out what had happened to their loved ones.

68. An administrative investigation on the missing persons had been carried out, but it had been a farce, because the investigation had been conducted by senior officers in the armed forces - the very people who were responsible for the crimes.

69. In the case of the violent abduction, secret imprisonment and disappearance of her own daughter, Elena Quinteros Almeida, she had been unable to ascertain what had happened to her. However, a secret document concerning her daughter had been published in the press and recognized as authentic by the Minister of Foreign Affairs and by the Executive, and the Senate had appointed a commission to conduct an investigation. The secret document contained an appraisal of the case of her daughter and had been considered early in July 1976 at a meeting of the Commanders-in-Chief of the armed forces and the Ministers of the Interior and National Defence. It had been prepared soon after her daughter's abduction on 28 June 1976 by government agents, from inside the Venezuelan Embassy in Montevideo, an incident which had led to the almost immediate breaking off of relations between Venezuela and Uruguay. The document considered the respective pros and cons of handing her daughter over to Venezuela or of not doing so. The authorities had decided not to hand her over.

70. The document and its contents, which the Government had certainly not communicated to the Working Group on Enforced or Involuntary Disappearances were now public knowledge. The experts would appreciate that the very idea of not handing over Elena Quinteros Almeida was in itself an offence. Thus, senior officials decided to deny her daughter's arrest because they considered that such a course would be preferable and that the Government would not appear to have violated the right of diplomatic asylum.

71. She wished to ask the Sub-Commission to urge the Working Group on Enforced or Involuntary Disappearances to request the Government of Uruguay to send it a copy of the secret document and the administrative file on the case, at present in the Ministry of Foreign Affairs, and to request the Working Group to investigate the fate of her daughter and other disappeared Uruguayans, since there might be other documentation in existence relevant to other cases of disappearances.

72. Ms. GUZMAN (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that the practice of enforced or involuntary disappearances, which according to the Working Group on Enforced or Involuntary Disappearances had occurred in 45 countries in 1989, was a matter of deep concern. The Working Group on Detention had therefore produced a draft declaration on the protection of all persons from enforced or involuntary disappearances on which consensus had been reached. The relatives of disappeared persons had also contributed to the drafting of the declaration, as had members of the Sub-Commission, non-governmental organizations and governments including the Government of Portugal.

73. She referred to cases of three disappeared persons in the Latin American region, including a mother of four who had founded an association of disappeared persons in Ayacucho, Peru, and two adolescents of 14 and 17 years of age detained by the Ecuadorian police.

74. Reports had also reached her association from other parts of the world of some thousand persons who had disappeared from Turkish Kurdistan between 1986 and 1989, and of the finding of a common grave containing the bodies of 73 executed persons. Moreover, a Saharan organization of the relatives of disappeared detainees had been set up to establish the facts about the disappearance of 800 Saharans for which the Government of Morocco was responsible, and was reporting further disappearances.

75. Those examples went to show that the practice of enforced disappearances was very much alive and demonstrated the vital need for the declaration, whose approval she hoped the Sub-Commission would expedite. The declaration would be a fitting tribute to the memory of all disappeared persons, including the Honorary President of her Association, Elida de Galletti.

76. The impunity of the perpetrators of enforced disappearances was safeguarded by laws, amnesties and pardons, a practice denounced by her Federation as immoral and contrary to international law.

77. Mr. Türk resumed the Chair.

78. Ms. KIRCHER (Amnesty International) said that the continued widespread use of administrative detention raised many issues of serious concern to her organization.

79. As noted in the report on the practice by Mr. Joinet (E/CN.4/Sub.2/1990/29), administrative detention circumvented the ordinary judicial process. It gave extensive powers to the executive authorities and the risks of arbitrariness, illegality and abuse were sharply increased. However, under international law Governments were certainly not free to act as they chose. There were applicable international standards, including provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights which, if fully implemented, could offer protection to those held in administrative detention. Yet in thousands of cases around the world those norms and standards continued to be flouted by Governments.

80. The report identified as one of the abuses the use of administrative detention "as a means of halting criticism and protest". Amnesty International was concerned that administrative detention was used extensively to detain people who had sought peacefully to exercise their rights to freedom of expression, association and assembly.

81. As the Rapporteur had noted, administrative detention was often invoked during states of emergency or situations of internal conflict. The most serious violations of human rights, including violations of the non-derogable rights to life and the prohibition of torture, often occurred in such circumstances. Incommunicado detention facilitated such practices.

82. Article 9, paragraph 4, of the International Covenant on Civil and Political Rights and Principle 32 of the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment provided that all detainees had a basic right to challenge their detention before a judicial authority. Indeed the Rapporteur had emphasized that it was particularly important that the lawfulness of administrative detention and the treatment of

detainees should be determined by a court promptly after arrest. In many cases, however, administrative detainees were denied the effective exercise of that right.

83. When detainees were allowed to appear before a court it was often a matter of weeks or longer after arrest, and the detention order might even be re-imposed by the Executive following the court's instruction to release the detainee.

84. Her organization's full statement, which would be circulated to members of the Sub-Commission, illustrated those points by examples from Israel and the occupied territories, China, Sri Lanka, India, Ghana, South Africa and Egypt.

85. Article 9, paragraph 1, of the International Covenant on Civil and Political Rights required that any deprivation of liberty must be in accordance with the procedures established by law. Yet in some countries, as noted in Mr. Joinet's report, the use of administrative detention was not practiced in accordance with any formal law. Hundreds of such detainees were held illegally for lengthy periods in Chad, Ethiopia and Mauritania, despite provisions in the laws of those countries which required all detainees to be brought before a judicial authority within a prescribed time-period.

86. Amnesty International urged all the Governments concerned to review the necessity of maintaining the practice of administrative detention. In particular, administrative detention should not be used as a substitute for and a means of avoiding the safeguards of the criminal justice system. Amnesty International welcomed the attention paid by the Sub-Commission to that matter and hoped that it would continue to examine the problems and take all possible steps to bring to an end the abuses involved.

87. Ms. WINKELMANN (Movement Against Racism and for Friendship Among Peoples) welcomed the report of the Special Rapporteur on states of emergency (E/CN.2/1990/33).

88. States of emergency were times of acute tension that increased the possibility of human rights violations and the unjust limitation of democratic activities. In particular, martial law situations required close scrutiny by the international community and remedial action by the Government concerned.

89. One aspect of martial law situations requiring special attention was the long-range impact of policies initiated during period of martial law. In Tibet, martial law had been imposed between 7 March 1989 and 1 May 1990 by the State Council of China. During that period the Chinese Government had sent a large number of soldiers and police to Lhasa including a special task force from Chengdu. Even after that period, in June 1990, there was still a heavy uniformed and plain-clothes police presence in Lhasa.

90. During the martial law period any Tibetan wishing to enter Lhasa required a temporary residence permit, which was hard to obtain and valid only for a few days. Yet no restrictions had been imposed on Chinese visitors or businessmen, in flagrant violation of the principle of non-discrimination.

91. Since the lifting of martial law a letter of permission from a Tibetan visitor's local authority was still necessary to enter Lhasa. It was known as the "blue book", cost 30 yuan per month - the average monthly salary in Tibet being some 60 yuan - and had to be renewed after a month. The business permits freely available to Chinese were rarely delivered to Tibetans.

92. During the period of martial law, regular political re-education meetings had been conducted, inter alia, in monasteries, offices and schools. When Tibetans declined to incriminate one another, boxes for anonymous denunciations were installed in schools, offices, monasteries and in the streets. Since the lifting of martial law re-education meetings were still continuing in schools and work units. All Tibetans were still required to attend neighbourhood committee meetings for re-education and denunciation of so-called counter-revolutionaries. Only the boxes had been removed.

93. At the onset of martial law, house-to-house searches had been carried out regularly at night. Such searches still continued. The Chinese were now arresting whole families of suspected counter-revolutionaries and the screening and investigation policy launched in 1989 remained in force.

94. A close analysis of similar situations elsewhere would probably reveal similar violations. Oppressive control might give quick results but placed the future in jeopardy. Her organization urged the Sub-Committee to scrutinize situations leading to the imposition of martial law and also to examine the de facto situation after martial law was lifted, since policies initiated during a period of martial law gave rise to long-lasting limitations on fundamental freedoms and seriously undermined the right of the people in a society to self-determination.

95. Mr. BRODY (International Commission of Jurists) expressed support for the draft declaration on the protection of all persons from enforced or involuntary disappearances, the conclusions of the Rapporteur on administrative detention, and the study on the right to a fair trial. The Working Group on Enforced or Involuntary Disappearances had stated that disappearances constituted the most comprehensive denial of human rights at present. While some of the worst situations of disappearances had abated, others had appeared, and the phenomenon continued to be widespread. The Working Group on Enforced or Involuntary Disappearances reported that in 1989 it had transmitted 721 new cases to Governments in all parts of the world.

96. It was recognized that disappearances violated practically all basic human rights, yet there was no international human rights instrument which specifically outlawed them. Equally important, no instrument set forth the mechanisms which States should institute to prevent further disappearances from occurring. For that reason the Working Group on Enforced or Involuntary Disappearances had on several occasions recommended the elaboration of an international instrument specifically designed to prevent disappearances. The Commission on Human Rights had also repeatedly invited the Sub-Commission to consider the question.

97. The draft declaration now before the Sub-Commission had been elaborated over three years by the Sub-Commission's Working Group on Detention and had been exhaustively considered at a three-day meeting of experts organized by the International Commission of Jurists in March 1990. The 22-article draft adopted by the Working Group represented a realistic and rigorous approach.

It not only prohibited disappearances but set forth various measures which States should take to ensure that they did not occur, or which should be taken to investigate disappearances and punish the perpetrators if they did occur. The International Commission of Jurists had prepared, for the benefit of the members of the Sub-Commission, a briefing paper which described the history of the draft declaration and each of its substantive provisions. It urged the Sub-Commission to consider and adopt the draft declaration and to recommend it for approval to the Commission on Human Rights and the General Assembly.

98. For almost four decades the International Commission of Jurists had been deeply troubled by the use of administrative detention. According to a study which it had made in 1985, at that time 85 countries had had provisions for administrative detention in their legislation, often using it as a long-term solution to silence opposition. Since then, the number had increased further. The International Commission of Jurists strongly supported Mr. Joinet's recommendation that a yearly report on detention throughout the world be presented to the Commission on Human Rights. A special rapporteur was needed both because there was no United Nations provision for monitoring all the situations in which administrative detention was practised and to give particular focus to such a widespread and growing phenomenon. A special rapporteur on detention would complement the roles of the Special Rapporteurs on torture and executions and the Working Group on Disappearances. He could determine whether there were any lacunae in the Body of Principles as it related to administrative detention and, if so, propose guidelines to fill them; make the body of principles widely known and respected, especially by law enforcement officials; carry out studies in order to submit proposals to the Commission on the conditions under which the right to a remedy such as habeas corpus could be declared non-derogable, as had been done by the Inter-American Court of Human Rights; and obtain information on detention practices in different countries. The problem of detention, particularly administrative detention, deserved greater attention than it had received in the past.

99. Finally, the International Commission of Jurists wished to support the proposal made by Mr. Chernichenko and Mr. Treat that the Sub-Commission should develop further its study on the right to a fair trial. Of particular merit was the proposal to prepare a draft declaration on the right to a fair trial which might elaborate on the standards set forth in article 14 of the International Covenant on Civil and Political Rights.

100. Mrs. GALVIS (Observer for Colombia) informed the Sub-Commission that under an agreement between her Government and the Centre for Human Rights a series of meetings on the administration of justice had been held in Bogotá, Medellín and Cali from 15 November to 15 December 1988, attended by judges and other members of the legal profession. Moreover, with the collaboration of the Government of Italy, the Centre for Human Rights and the Government of Colombia, a seminar on judicial inquiries, terrorism, drug trafficking and human rights had been held in Rome from 9 to 20 September 1989, also attended by judges and members of the legal profession.

101. Seminars on the organization and updating of legal functions and other international human rights legislation had been held in Colombia under the auspices of UNDP at law schools and police stations. With the help of the Governments of Canada and the Netherlands, training had been provided for municipal officers. Under Act No. 03 of 1990, each town hall in Colombia now

had a representative for the defence of the human rights of the local citizens, one of whose functions was to receive complaints about human rights violations. The human rights representative had access to all State bodies in his area, had to be notified within 24 hours of any arrest, detention or raid carried out in that area, and was empowered to take legal action when necessary.

102. Mrs. KSENTINI drew the Sub-Commission's attention to two very important cases of detention. The first was at the El-Khiam camp in Israeli-occupied southern Lebanon. Most participants would have received the letter from the Permanent Mission of Lebanon (E/CN.4/Sub.2/1990/55) according to which many of the detainees were being tortured and one had been killed after having been held since 1985. The International Committee of the Red Cross was not allowed to visit the camp. She requested that the Sub-Commission should appeal to the occupation authorities to allow humanitarian organizations to visit the camp.

103. The second case concerned three Palestinians who were due to participate in a very important international NGO conference on Palestine opening on 27 August 1990 and who were being prevented from leaving for it. She requested the Sub-Commission to appeal to the Israeli authorities to allow them to participate in the Conference.

104. The CHAIRMAN said that, in the absence of any objection, he would take it that the Sub-Commission would make the appropriate appeals. Mrs. Ksentini would no doubt transmit the relevant details to him.

105. It was so agreed.

106. Mr. EIDE, speaking on a point of order, said that the world was facing an extremely ominous moment in international relations. The Sub-Commission had heard the very eloquent plea made by the Chairman of the Commission regarding the fate of foreign nationals in Kuwait and Iraq who were being deprived of the right to leave. A very serious escalation might be imminent. The Sub-Commission therefore needed to make an appeal. In order to be able to find the best approach and to have the widest possible consensus, he moved that the public meeting be closed and that the Sub-Commission then hold a brief private meeting on the subject.

107. It was so agreed.

The meeting rose at 5.50 p.m.